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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.

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Presidential Documents

Title 3—

The President

Executive Order 13523—Half-Day Closing of Executive Departments and Agencies on Thursday, December 24, 2009

Correction

In Presidential document E9–30020 beginning on page 66563 in the issue of Wednesday, December 16, 2009, make the following correction:

On page 66563, the Executive Order number and date line should read ''Executive Order 13523 of December 11, 2009''.

[FR Doc. Z9–30020
Filed 12–17–09; 8:45 am]
Billing Code 1505–01–D

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2009–0036]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the Karnal bunt regulations to remove certain areas or fields in Riverside County, CA, from the list of regulated areas based on our determination that those areas or fields meet our criteria for release from regulation of Karnal bunt, a fungal disease of wheat. This interim rule relieved restrictions on certain areas or fields that are no longer necessary.

DATES: Effective on **December 18, 2009**, we are adopting as a final rule the interim rule that was published at 74 FR 26774–26777 on June 4, 2009, and that was corrected in a document that was published at 74 FR 27423 on June 10, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, Karnal Bunt Program Manager, Plant Pathogen and Weed Programs, EDP, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1236; (301) 734–7228.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed followed by very specific environmental conditions matched during specific stages of wheat growth. The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) regulates the movement of articles in the United States that could spread Karnal bunt and works toward eventual eradication of Karnal bunt through bio-sanitary measures.

In an interim rule [1] effective and published in the **Federal Register** on June 4, 2009 (74 FR 26774-26777, Docket No. APHIS-2009-0036), we amended the Karnal bunt regulations contained in 7 CFR 301.89-1 through 301.89-16 by removing certain areas or fields in Riverside County, CA, from the list of regulated areas in § 301.89-3(g). That action was based on our determination that these fields or areas are eligible for release from regulation under the criteria in § 301.89-3(f). The interim rule relieved restrictions on fields within those areas that were no longer necessary. As a result of the interim rule, 286 fields and 8,226 acres were removed from the list of regulated areas in Riverside County, CA; 35,271 acres in Riverside County remain regulated for Karnal bunt.

Comments on the interim rule were required to be received on or before August 3, 2009. We received one comment by that date, from a wheat industry organization. The commenter supported the interim rule. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

[1] To view the interim rule, a correction to the interim rule, and the comment we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0036*).

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR part 301 that was published at 74 FR 26774-26777 on June 4, 2009, and that was corrected in a document that was published at 74 FR 27423 on June 10, 2009.

Done in Washington, DC, this 11th day of December 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–30130 Filed 12–17–09: 8:45 am]

BILLING CODE: 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. APHIS–2009–0046]

Tuberculosis in Cattle and Bison; State and Zone Designations; Michigan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations to adjust the boundaries of the modified accredited and modified accredited advanced tuberculosis risk classification zones for the State of Michigan. We have determined that Antrim, Charlevoix, Cheboygan, Crawford, Emmet, and Otsego Counties, MI, which are currently designated as modified accredited, now meet our requirements for modified accredited advanced status. Therefore, we are removing these six counties from the list of modified accredited zones and adding them to the list of modified accredited advanced zones. This action lessens restrictions on the interstate movement of cattle and bison from these areas of Michigan.

DATES: This interim rule is effective **December 18, 2009**. We will consider all comments that we receive on or before **February 16, 2010**.

Compliance Date: The date for complying with the identification requirements for sexually intact heifers moving from the modified accredited

advanced zone in Michigan to approved feedlots and for steers and spayed heifers moving from the modified accredited advanced zone in Michigan to any destination (9 CFR 77.10(b)), and for complying with the identification and certification requirements for sexually intact heifers moving from the modified accredited advanced zone in Michigan to unapproved feedlots (9 CFR 77.10(d)), is delayed until further notice. The compliance date for all other provisions in 9 CFR part 77 applicable to the interstate movement of cattle and bison from the State of Michigan is **December 18, 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-2009-0046*) 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-2009-0046, 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-2009-0046.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. C. William Hench, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 2150 Centre Avenue, Building B-3E20, Fort Collins, CO 80526-8117; (970) 494-7378.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious and infectious granulomatous disease caused by the bacterium *Mycobacterium bovis*. Although commonly defined as a chronic debilitating disease, bovine tuberculosis can occasionally assume an acute, rapidly progressive course. While any body tissue can be affected, lesions are most frequently observed in the lymph nodes, lungs, intestines, liver, spleen, pleura, and peritoneum. Although cattle are considered to be the true hosts of *M. bovis*, the disease has been reported in several other species of both domestic and nondomestic animals, as well as in humans.

At the beginning of the past century, tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment in the United States of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for tuberculosis in livestock.

In carrying out the national eradication program, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations. The regulations require the testing of cattle and bison for tuberculosis, define the Federal tuberculosis status levels for States or zones (accredited-free, modified accredited advanced, modified accredited, accreditation preparatory, and nonaccredited), provide the criteria for attaining and maintaining those status levels, and contain testing and movement requirements for cattle and bison leaving States or zones of a particular status level. These regulations are contained in 9 CFR part 77 (referred to below as the regulations) and in the Bovine Tuberculosis Eradication Uniform Methods and Rules, 1999 (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

Request for Boundary Adjustment of Modified Accredited Advanced Zone in Michigan

The status of a State or zone is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. In addition, the regulations allow that a State may request split-State status via partitioning into specific geographic regions or zones with differential status designations if bovine tuberculosis is detected in a portion of a State and the State demonstrates that it meets certain criteria with regard to zone classification.

The State of Michigan is currently divided into three zones with different classifications. The first zone, which is classified as accredited-free, is comprised of an area in Michigan known as the Upper Peninsula that comprises Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft Counties. The second zone, which is classified as modified accredited, comprises Alcona, Alpena, Antrim, Charlevoix, Cheboygan, Crawford, Emmet, Montmorency, Oscoda, Otsego, and Presque Isle Counties and those portions of Iosco and Ogemaw Counties that are north of the southernmost boundary of the Huron National Forest and the Au Sable State Forest. The third zone covers the remainder of the State and is classified as modified accredited advanced.

We have received a request from the State of Michigan for an addition to the modified accredited advanced zone. Specifically, State animal health officials asked that the status of Antrim, Charlevoix, Cheboygan, Crawford, Emmet, and Otsego Counties be raised from modified accredited to modified accredited advanced. In their request, Michigan officials demonstrated to APHIS that the counties listed above meet the criteria for modified accredited advanced status set forth in the definition of *modified accredited advanced State or zone* in § 77.5 of the regulations, which provides that the Administrator may allow a State or zone with fewer than 30,000 herds to have up to 3 affected herds for each of the most recent 2 years. The six counties listed in Michigan's status upgrade request contain a total of 570 herds of cattle and bison. In accordance with the regulations, Michigan has demonstrated that each of these counties, which have been classified as modified accredited, has had fewer than 3 affected herds for each of the most recent 2 years. Additionally, the State complies with the conditions of the UMR.

Based on our evaluation of Michigan's request in light of the criteria set forth in the regulations, we have determined that Antrim, Charlevoix, Cheboygan, Crawford, Emmet, and Otsego Counties meet the requirements listed in the regulations for modified accredited advanced status. Therefore, we are classifying those counties as modified accredited advanced and removing them

from Michigan's modified accredited zone.

Immediate Action

Immediate action is warranted to relieve restrictions on the interstate movement of cattle and bison from the newly classified modified accredited advanced zone in Michigan. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

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

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.The analysis is summarized below.The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Michigan currently has three bovine tuberculosis status zones: Accredited-free, modified accredited advanced, and modified accredited. This rule will reclassify six counties from modified accredited to modified accredited advanced. The elevation of an area to modified accredited advanced status from modified accredited status removes certain interstate movement and whole herd bovine tuberculosis testing requirements. Cattle owners will benefit from time savings and reduced costs associated with bovine tuberculosis testing. The annual cost savings to all producers could be between $266,000 and $400,000. However, the six counties covered in this rule account for less than 4 percent of cattle operations and less than 2 percent of the total number of cattle in the State of Michigan. In addition, bovine tuberculosis testing costs are about 1 percent or less of the value of the cattle tested. Thus, the expected savings will be relatively small.

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

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect and (2) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 77.11, paragraph (b)(1) is revised to read as follows:

§ 77.11 Modified accredited States or zones.

* * * * *

(b) * * *

(1) A zone in Michigan that comprises Alcona, Alpena, Montmorency, Oscoda, and Presque Isle Counties and those portions of Iosco and Ogemaw Counties that are north of the southernmost boundary of the Huron National Forest and the Au Sable State Forest.

* * * * *

Done in Washington, DC, this 11th day of December 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–30128 Filed 12–17–09: 7:31 am]

BILLING CODE: 3410–34–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9475]

RIN 1545–BF83

Corporate Reorganizations; Distributions Under Sections 368(a)(1)(D) and 354(b)(1)(B)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations under section 368 of the Internal Revenue Code (Code). The regulations provide guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction. This document also contains final regulations under section 358 that provide guidance regarding the determination of the basis of stock or securities in a reorganization described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation is issued and distributed in the transaction. This document also contains final regulations under section 1502 that govern reorganizations described in section 368(a)(1)(D) involving members of a consolidated group. These regulations affect corporations engaging in such transactions and their shareholders.

DATES: *Effective Date:* These regulations are effective on *December 18, 2009.*

Applicability Date: For dates of applicability, see § 1.368–2(l)(4)(i).

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Code provides general nonrecognition treatment for reorganizations specifically described in section 368(a). Section 368(a)(1)(D) describes as a reorganization a transfer by a corporation (transferor corporation) of all or a part of its assets to another corporation (transferee corporation) if, immediately after the transfer, the transferor corporation or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, is in control of the transferee corporation; but only if stock or securities of the controlled corporation

are distributed in pursuance of a plan of reorganization in a transaction that qualifies under section 354, 355, or 356.

Section 354(a)(1) provides that no gain or loss shall be recognized if stock or securities in a corporation that is a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation that is a party to the reorganization. Section 354(b)(1)(B) provides that section 354(a)(1) shall not apply to an exchange in pursuance of a plan of reorganization described in section 368(a)(1)(D) unless the transferee corporation acquires substantially all of the assets of the transferor corporation, and the stock, securities, and other properties received by such transferor corporation, as well as the other properties of such transferor corporation, are distributed in pursuance of the plan of reorganization.

Further, section 356 provides that if section 354 or 355 would apply to an exchange but for the fact that the property received in the exchange consists not only of property permitted by section 354 or 355 without the recognition of gain or loss but also of other property or money, then the gain, if any, to the recipient shall be recognized, but not in excess of the amount of money and fair market value of such other property. Accordingly, in the case of an acquisitive transaction, there can only be a distribution to which section 354 or 356 applies where the target shareholder(s) receive at least some property permitted to be received by section 354.

On December 19, 2006, the IRS and Treasury Department published a notice of proposed rulemaking (REG–125632–06) in the **Federal Register** (71 FR 75898) that included regulations under section 368 (the Temporary Regulations) providing guidance regarding whether the distribution requirement under sections 368(a)(1)(D) and 354(b)(1)(B) is satisfied if there is no actual distribution of stock and/or securities. The Temporary Regulations provide that the distribution requirement will be satisfied even though no stock and/or securities is actually issued in the transaction if the same persons or persons own, directly or indirectly, all of the stock of the transferor and transferee corporations in identical proportions. In such cases, the transferee will be deemed to issue a nominal share of stock to the transferor in addition to the actual consideration exchanged for the transferor's assets. The nominal share is then deemed distributed by the transferor to its shareholders and, when appropriate, further transferred through chains of ownership to the extent necessary to reflect the actual ownership of the transferor and transferee corporations. The IRS and Treasury Department issued the Temporary Regulations in response to taxpayer requests regarding whether certain acquisitive transactions can qualify as reorganizations described in section 368(a)(1)(D) where no stock of the transferee corporation is issued and distributed in the transaction pending a broader study of issues related to acquisitive section 368(a)(1)(D) reorganizations in general. In the notice of proposed rulemaking, the IRS and Treasury Department requested comments on the Temporary Regulations as well as on several broader issues discussed below relating to acquisitive section 368(a)(1)(D) reorganizations.

On February 27, 2007, the IRS and Treasury Department published a clarifying amendment to the Temporary Regulations (REG–157834–06) in the **Federal Register** (72 FR 9284–9285) providing that the deemed issuance of the nominal share of stock of the transferee corporation in a transaction otherwise described in section 368(a)(1)(D) does not apply if the transaction otherwise qualifies as a triangular reorganization described in § 1.358–6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D).

No public hearing regarding the Temporary Regulations was requested or held. However, comments were received. After consideration of all of the comments, the Temporary Regulations are adopted as revised by this Treasury decision. The principal comments and changes are discussed in this preamble.

Explanation of Provisions

These final regulations retain the rules of the Temporary Regulations, but make certain modifications to the Temporary Regulations in response to comments received. The following paragraphs describe the most significant comments received and the extent to which they have been incorporated into these final regulations.

Meaningless Gesture Doctrine

Notwithstanding the requirement in section 368(a)(1)(D) that ''stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 354, 355, or 356'', the IRS and the courts have not required the actual issuance and distribution of stock and/or securities of the transferee corporation in circumstances where the same person or persons own all the stock of the transferor corporation and the transferee corporation. In such circumstances, the IRS and the courts have viewed an issuance of stock by the transferee corporation to be a ''meaningless gesture'' not mandated by sections 368(a)(1)(D) and 354(b). See *James Armour, Inc.* v. *Commissioner*, 43 T.C. 295, 307 (1964); *Wilson* v. *Commissioner*, 46 T.C. 334 (1966); Rev. Rul. 70–240, 1970–1 CB 81. In the notice of proposed rulemaking, the IRS and Treasury Department requested comments on whether the meaningless gesture doctrine is inconsistent with the distribution requirement in sections 368(a)(1)(D) and 354(b)(1)(B), especially in situations in which the cash consideration received equals the full fair market value of the property transferred such that there is no missing consideration for which the nominal share of stock deemed received and distributed could substitute. See § 601.601(d)(2)(ii).

Commentators noted that the doctrine is appropriate in the case where there is some excess in value of the assets transferred over the amount of cash received. In cases where the cash received is equal to the fair market value of the assets transferred, commentators agree that it is the proper approach because as a policy or administrative matter it is inappropriate to require a different outcome when the only factual difference is whether there is a nominal difference between the value of the assets and the cash consideration received. Commentators noted that deeming the distribution requirement to be satisfied in order to prevent an asset sale from being treated as a taxable exchange is not problematic enough to warrant a change from Rev. Rul. 70–240. Commentators have also suggested that the final regulations clarify that the rules apply to transactions regardless of whether the sum paid for the transferor's assets is exactly equal to their value.

The IRS and Treasury Department agree with the comments received regarding the meaningless gesture doctrine. Accordingly, these final regulations retain the rules of the Temporary Regulations which are based in part on the meaningless gesture doctrine. In addition, consistent with the IRS and Treasury Department's view of such transactions and in response to comments, the final regulations provide that if no consideration is received, or the value of the consideration received in the transaction is less than the fair market value of the transferor corporation's assets, the transferee corporation will be treated as issuing stock with a value equal to the excess

of the fair market value of the transferor corporation's assets over the value of the consideration actually received in the transaction. The final regulations further provide that if the value of the consideration received in the transaction is equal to the fair market value of the transferor corporation's assets, the transferee corporation will be deemed to issue a nominal share (discussed in this preamble) of stock to the transferor corporation in addition to the actual consideration exchanged for the transferor corporation's assets.

Issuance of Nominal Share

As described in this preamble, if the same person or persons own, directly or indirectly, all of the stock of the transferor and transferee corporations in identical proportions in a transaction otherwise described in section 368(a)(1)(D), the transferee will be deemed to issue a nominal share of stock to the transferor in addition to the actual consideration exchanged for the transferor's assets. The nominal share is then deemed distributed by the transferor to its shareholders and, when appropriate, further transferred through the chains of ownership to the extent necessary to reflect the actual ownership of the transferor and transferee corporations.

Commentators have asked for clarification as to whether the deemed issuance of a nominal share has any tax significance beyond satisfying the distribution requirement of section 354(b)(1)(B). Commentators have suggested that instead of deeming a stock issuance in a purported section 368(a)(1)(D) reorganization, the final regulations should simply state that such transactions are deemed to be transactions described in section 356. Furthermore, commentators believe that if the transferor corporation owns stock of the transferee corporation before the reorganization and the transferor corporation distributes such transferee corporation stock (and no other stock) to its shareholders, the transaction would qualify under section 354(b)(1)(B) and therefore would qualify under section 368(a)(1)(D). Commentators believe the IRS and Treasury Department have the authority to reach that result without deeming a nominal share to be issued as this approach has been adopted elsewhere. See § 1.368–2(d)(4) (a subsidiary liquidation not subject to section 332 can qualify as a section 368(a)(1)(C) reorganization by effectively treating old and cold subsidiary stock that the parent holds as exchanged for hypothetical parent voting stock issued in exchange for the subsidiary's assets). Commentators have suggested that if the final regulations retain the nominal share concept, then the final regulations should clarify that the nominal share has no significance other than to meet the distribution requirement of section 354(b)(1)(B).

The IRS and Treasury Department have carefully considered the comments regarding the nominal share concept and believe that it is preferable to an approach that simply deems the statutory requirements satisfied because the nominal share also provides a useful mechanism with respect to stock basis consequences to the exchanging shareholder. As noted above, following the deemed issuance of the nominal share, it is deemed distributed by the transferor to its shareholders and, when appropriate, further transferred through the chains of ownership to the extent necessary to reflect the actual ownership of the transferor and transferee corporation (the final regulations provide similar treatment where, in a transaction involving no consideration or partial consideration, the transferee corporation is deemed to issue stock). Beyond satisfying section 354(b)(1)(B), the IRS and Treasury Department believe that the nominal share should be treated as nonrecognition property under section 358(a), and thus substituted basis property. Following basis adjustments (for example, under section 358 or § 1.1502–32), the nominal share preserves remaining basis, if any, and facilitates future stock gain or loss recognition by the appropriate shareholder.

With respect to the comment regarding previously owned stock of the transferee by the transferor qualifying under section 354(b)(1)(B), this raises issues that are beyond the scope of this regulation project and therefore are not addressed in this document. Accordingly, the final regulations retain the rule that if the same persons or persons own, directly or indirectly, all of the stock of the transferor and transferee corporations in identical proportions, the transferee will be deemed to issue a nominal share of stock to the transferor in addition to the actual consideration exchanged for the transferor's assets.

Basis Allocation

While the IRS and Treasury Department believe that all of the normal tax consequences occur from the issuance of a nominal share in a transaction described in these final regulations, commentators have noted that such consequences are unclear with respect to the allocation of basis in the shares of the stock or securities surrendered when the consideration received in the transaction consists solely of cash. While commentators believe that the basis in the shares of the stock or securities surrendered should be preserved in the basis of the stock of the transferee, the mechanics of achieving this result are unclear.

The regulations under § 1.358–2(a)(2)(iii) address how basis is determined in the case of a reorganization in which no property is received or property (including property permitted by section 354 to be received without the recognition of gain or ''other property'' or money) with a fair market value less than that of the stock or securities surrendered is received in the transaction. The regulations treat the acquiring corporation as issuing an amount of stock equal to the fair market value of the stock surrendered, less any amount of consideration actually received by the exchanging shareholder in the form of stock, securities, other property, or money. The basis of that deemed issued stock is determined by reference to the basis of the shares surrendered in the reorganization, and adjusted as provided in the regulations. The shareholder's stock in the acquiring corporation is then treated as being recapitalized. In the recapitalization, the shareholder is treated as surrendering all of its shares of the acquiring corporation, including those shares owned immediately prior to the reorganization and those shares the shareholder is deemed to receive, in exchange for the shares that the shareholder actually holds immediately after the reorganization. The basis of the shares that the shareholder actually owns is determined under the rules that would have applied had the recapitalization actually occurred with respect to the shareholder's actual shares and the shares the shareholder is deemed to have received. However, these rules do not literally apply to a transaction involving solely other property or money because the rules address situations in which a shareholder of the target corporation receives no property or property with a fair market value less than that of the stock or securities the shareholder surrendered in the transaction.

The IRS and Treasury Department agree with the commentators that the basis in the shares of the stock surrendered should be preserved in the basis of the stock of the transferee in a transaction described in these final regulations. The IRS and Treasury Department also agree that current law does not adequately address the manner in which the basis in the shares of the stock or securities surrendered is

preserved in the basis of the stock of the transferee. Accordingly, the regulations under § 1.358–2(a)(2)(iii) are amended to provide that in the case of a reorganization in which the property received consists solely of non-qualifying property equal to the value of the assets transferred (as well as a nominal share described in these final regulations), the shareholder or security holder may designate the share of stock of the transferee to which the basis, if any, of the stock or securities surrendered will attach. The IRS and Treasury Department believe this approach is the most consistent with current law regarding basis determination as a similar result would occur under § 1.358–2 if stock was actually issued in the transaction. Nonetheless, as part of its broader study of basis issues, the IRS and Treasury Department will re-examine these regulations and the rules may change upon completion of this broader study.

Application of Final Regulations to Consolidated Groups

In the notice to proposed rulemaking, the IRS and Treasury Department requested comments on whether the Temporary Regulations should apply when the parties to the reorganization are members of a consolidated group. Commentators have stated that the Temporary Regulations should apply because there is no reason to distinguish a consolidated group member's reorganization treatment from that of a member of a nonconsolidated affiliated group. Commentators have suggested that the consolidated return regulations should be coordinated with the Temporary Regulations. Specifically, § 1.1502–13(f)(3) provides that, in the case of an acquisitive intercompany reorganization involving the receipt of money or other property (boot), boot is taken into account immediately after the reorganization in a separate transaction. *See* § 1.1502–13(f)(7), *Example 3* (an intercompany reorganization with boot is treated as if the acquirer had issued only its stock in the reorganization, and the deemed shares were then redeemed by the acquirer in exchange for the boot). The effect of this rule is to remove the boot from section 356 (dividend within gain treatment) and treat it as received in a redemption which is in turn taxed as a section 301 distribution.

Commentators have suggested that the nominal share concept under the Temporary Regulations is consistent with the deemed shares in *Example 3* under § 1.1502–13(f)(7) as the nominal share fiction deems a transaction to qualify as a section 368 reorganization, and the shares deemed issued under the § 1.1502–13(f)(3) fiction determine the consequences of the reorganization. Commentators have requested that an example be added to § 1.1502–13 to illustrate the interaction of the Temporary Regulations and § 1.1502–13(f)(3). Specifically, commentators have requested that the example clarify that the nominal share does not exist for any purpose other than to satisfy the distribution requirement of section 354(b)(1)(B). Therefore, § 1.1502–13(f)(3) should apply in the same way to the post-reorganization deemed redemption of stock in exchange for the boot actually received (that is, as if the distributee did not own the nominal share). Commentators believe that any remaining stock basis or ELA in the deemed shares under the § 1.1502–13(f)(3) fiction should shift to the member(s) that actually own stock in the transferee corporation under the principles of § 1.302–2(c).

As discussed in this preamble, the IRS and Treasury Department believe that the nominal share has significance beyond satisfaction of the distribution requirement of section 354(b)(1)(B), most notably for purposes of determining stock basis consequences to the appropriate shareholder. In an all cash sale of assets between members of a consolidated group, the IRS and Treasury Department believe that giving significance to the nominal share for purposes beyond the distribution requirement is consistent with the fundamental premise underlying the intercompany transaction deferral system which is to preserve the location of gain or loss within a consolidated group. Therefore, if an all cash transaction described in these final regulations occurs between members of a consolidated group, the selling member (S) will be treated as receiving the nominal share and additional stock of the buying member (B) under § 1.1502–13(f)(3), which it will distribute to its shareholder member (M) in liquidation. Immediately after the sale, the B stock (with the exception of the nominal share which is still held by M) received by M is treated as redeemed, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. M's basis in the B stock will be reduced under § 1.1502–32(b)(3)(v). Under the rules of § 1.302–2(c), any remaining basis will attach to the nominal share. If applicable, the nominal share will be further transferred through chains of ownership to the extent necessary to reflect the actual ownership of B. An example has been added to § 1.1502–13 to illustrate the interaction of these final regulations and the consolidated return regulations.

Additional Comments Received

The IRS and Treasury Department also requested comments on the extent, if any, to which the continuity of interest requirement should apply to a reorganization described in section 368(a)(1)(D) as well as the continued vitality of various liquidation-reincorporation authorities after the enactment of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2085 (1986)). Comments were received on these issues. The IRS and Treasury Department continue to study these issues as part of a broad study of reorganizations under section 368(a)(1)(D).

Additional Comments Requested

The IRS and Treasury Department request comments on the application of the final regulations to reorganizations involving foreign corporations or shareholders, including comments regarding: (1) Whether any section 1248 amount attributable to the stock of the transferor corporation can be preserved in the nominal share deemed issued by the transferee corporation; (2) the manner in which earnings and profits (E&P) are (or should be) taken into account for purposes of section 902 when an exchanging shareholder recognizes gain under section 356(a) that is treated as a dividend under section 356(a)(2) from the E&P of the transferor and transferee corporations (including whether the E&P of the corporation is combined for this purpose or whether an ordering rule applies); (3) whether and how section 902 should apply when an exchanging shareholder does not actually own stock in the transferee corporation but the exchanging shareholder recognizes gain under section 356(a) that is treated as a dividend from the E&P of the transferee corporation (including whether a limitation similar to that of section 304(b)(5) is appropriate in such cases); (4) whether and how, under section 959, an exchanging shareholder should be able to access previously taxed E&P of a foreign transferor and/or transferee corporation before any non-previously taxed E&P of either corporation; and (5) whether and how section 897 applies if the transferor corporation is a United States real property holding corporation with at least one foreign shareholder.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a

regulatory assessment is not required. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses, and, moreover, that any burden on taxpayers is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Bruce A. Decker, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.358–2 is amended by adding a sentence at the end of paragraph (a)(2)(iii) to read as follows:

§ 1.358–2 Allocation of basis among nonrecognition property.

(a) * * *

(2) * * *

(iii) * * * If a shareholder or security holder surrenders a share of stock or a security in a transaction under the terms of section 354 (or so much of section 356 as relates to section 354) in which such shareholder or security holder is deemed to receive a nominal share described in § 1.368–2(l), such shareholder may, after adjusting the basis of the nominal share in accordance with the rules of this section and § 1.358–1, designate the share of stock of the issuing corporation to which the basis, if any, of the nominal share will attach.

* * * * *

■ **Par. 3.** Section 1.368–2 is amended by revising paragraph (l) to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(l) *Certain transactions treated as reorganizations described in section 368(a)(1)(D)*—(1) *General rule.* In order to qualify as a reorganization under section 368(a)(1)(D), a corporation (transferor corporation) must transfer all or part of its assets to another corporation (transferee corporation) and immediately after the transfer the transferor corporation, or one or more of its shareholders (including persons who were shareholders immediately before the transfer), or any combination thereof, must be in control of the transferee corporation; but only if, in pursuance of the plan, stock or securities of the transferee are distributed in a transaction which qualifies under section 354, 355, or 356.

(2) *Distribution requirement*—(i) *In general.* For purposes of paragraph (l)(1) of this section, a transaction otherwise described in section 368(a)(1)(D) will be treated as satisfying the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) notwithstanding that there is no actual issuance of stock and/or securities of the transferee corporation if the same person or persons own, directly or indirectly, all of the stock of the transferor and transferee corporations in identical proportions. In cases where no consideration is received or the value of the consideration received in the transaction is less than the fair market value of the transferor corporation's assets, the transferee corporation will be treated as issuing stock with a value equal to the excess of the fair market value of the transferor corporation's assets over the value of the consideration actually received in the transaction. In cases where the value of the consideration received in the transaction is equal to the fair market value of the transferor corporation's assets, the transferee corporation will be deemed to issue a nominal share of stock to the transferor corporation in addition to the actual consideration exchanged for the transferor corporation's assets. The nominal share of stock in the transferee corporation will then be deemed distributed by the transferor corporation to the shareholders of the transferor corporation, as part of the exchange for the stock of such shareholders. Where appropriate, the nominal share will be further transferred through chains of ownership to the extent necessary to reflect the actual ownership of the transferor and transferee corporations. Similar treatment to that of the preceding two sentences shall apply where the transferee corporation is treated as issuing stock with a value equal to the excess of the fair market value of the transferor corporation's assets over the value of the consideration actually received in the transaction.

(ii) *Attribution.* For purposes of paragraph (l)(2)(i) of this section, ownership of stock will be determined by applying the principles of section 318(a)(2) without regard to the 50 percent limitation in section 318(a)(2)(C). In addition, an individual and all members of his family described in section 318(a)(1) shall be treated as one individual.

(iii) *De minimis variations in ownership and certain stock not taken into account.* For purposes of paragraph (l)(2)(i) of this section, the same person or persons will be treated as owning, directly or indirectly, all of the stock of the transferor and transferee corporations in identical proportions notwithstanding the fact that there is a de minimis variation in shareholder identity or proportionality of ownership. Additionally, for purposes of paragraph (l)(2)(i) of this section, stock described in section 1504(a)(4) is not taken into account.

(iv) *Exception.* Paragraph (l)(2) of this section does not apply to a transaction otherwise described in § 1.358–6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D).

(3) *Examples.* The following examples illustrate the principles of paragraph (l) of this section. For purposes of these examples, each of A, B, C, and D is an individual, T is the acquired corporation, S is the acquiring corporation, P is the parent corporation, and each of S1, S2, S3, and S4 is a direct or indirect subsidiary of P. Further, all of the requirements of section 368(a)(1)(D) other than the requirement that stock or securities be distributed in a transaction to which section 354 or 356 applies are satisfied. The examples are as follows:

Example 1. A owns all the stock of T and S. The T stock has a fair market value of $100x. T sells all of its assets to S in exchange for $100x of cash and immediately liquidates. Because there is complete shareholder identity and proportionality of ownership in T and S, under paragraph (l)(2)(i) of this section, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $100x of cash actually exchanged for the T assets, and T will be deemed to distribute all such consideration to A. The transaction qualifies as a

reorganization described in section 368(a)(1)(D).

Example 2. The facts are the same as in *Example 1* except that C, A's son, owns all of the stock of S. Under paragraph (l)(2)(ii) of this section, A and C are treated as one individual. Accordingly, there is complete shareholder identity and proportionality of ownership in T and S. Therefore, under paragraph (l)(2)(i) of this section, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $100x of cash actually exchanged for the T assets, and T will be deemed to distribute all such consideration to A. A will be deemed to transfer the nominal share of S stock to C. The transaction qualifies as a reorganization described in section 368(a)(1)(D).

Example 3. P owns all of the stock of S1 and S2. S1 owns all of the stock of S3, which owns all of the stock of T. S2 owns all of the stock of S4, which owns all of the stock of S. The T stock has a fair market value of $70x. T sells all of its assets to S in exchange for $70x of cash and immediately liquidates. Under paragraph (l)(2)(ii) of this section, there is indirect, complete shareholder identity and proportionality of ownership in T and S. Accordingly, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $70x of cash actually exchanged for the T assets, and T will be deemed to distribute all such consideration to S3. S3 will be deemed to distribute the nominal share of S stock to S1, which, in turn, will be deemed to distribute the nominal share of S stock to P. P will be deemed to transfer the nominal share of S stock to S2, which, in turn, will be deemed to transfer such share of S stock to S4. The transaction qualifies as a reorganization described in section 368(a)(1)(D).

Example 4. A, B, and C own 34%, 33%, and 33%, respectively, of the stock of T. The T stock has a fair market value of $100x. A, B, and C each own 33% of the stock of S. D owns the remaining 1% of the stock of S. T sells all of its assets to S in exchange for $100x of cash and immediately liquidates. For purposes of determining whether the distribution requirement of sections 368(a)(1)(D) and 354(b)(1)(B) is met, under paragraph (l)(2)(iii) of this section, D's ownership of a de minimis amount of stock of S is disregarded and the transaction is treated as if there is complete shareholder identity and proportionality of ownership in T and S. Because there is complete shareholder identity and proportionality of ownership in T and S, under paragraph (l)(2)(i) of this section, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $100x of cash actually exchanged for the T assets, T will be deemed to distribute all such consideration to A, B, and C, and the nominal S stock will be deemed transferred among the S shareholders to the extent necessary to reflect their actual ownership of S. The transaction qualifies as a reorganization described in section 368(a)(1)(D).

Example 5. The facts are the same as in *Example 4* except that A, B, and C own 34%, 33%, and 33%, respectively, of the common stock of T and S. D owns preferred stock in S described in section 1504(a)(4). For purposes of determining whether the distribution requirement of sections 368(a)(1)(D) and 354(b)(1)(B) is met, under paragraph (l)(2)(iii) of this section, D's ownership of S stock described in section 1504(a)(4) is ignored and the transaction is treated as if there is complete shareholder identity and proportionality of ownership in T and S. Because there is complete shareholder identity and proportionality of ownership in T and S, under paragraph (l)(2)(i) of this section, the requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are treated as satisfied notwithstanding the fact that no S stock is issued. Pursuant to paragraph (l)(2)(i) of this section, S will be deemed to issue a nominal share of S stock to T in addition to the $100x of cash actually exchanged for the T assets, and T will be deemed to distribute all such consideration to A, B, and C. The transaction qualifies as a reorganization described in section 368(a)(1)(D).

Example 6. A and B each own 50% of the stock of T. The T stock has a fair market value of $100x. B and C own 90% and 10%, respectively, of the stock of S. T sells all of its assets to S in exchange for $100x of cash and immediately liquidates. Because complete shareholder identity and proportionality of ownership in T and S does not exist, paragraph (l)(2)(i) of this section does not apply. The requirements of sections 368(a)(1)(D) and 354(b)(1)(B) are not satisfied, and the transaction does not qualify as a reorganization described in section 368(a)(1)(D).

(4) *Effective/applicability date.* (i) *In general.* This section applies to transactions occurring on or after *December 18, 2009.* For rules regarding transactions occurring before *December 18, 2009,* see section 1.368–2T(l) as contained in 26 CFR part 1.

(ii) *Transitional rule.* A taxpayer may apply the provisions of these regulations to transactions occurring before *December 18, 2009.* However, the transferor corporation, the transferee corporation, any direct or indirect transferee of transferred basis property from either of the foregoing, and any shareholder of the transferor or transferee corporation may not apply the provisions of these regulations unless all such taxpayers apply the provisions of the regulations.

§ 1.368–2T [Removed]

■ **Par. 4.** Section 1.368–2T is removed.

■ **Par. 5.** Section 1.1502–13 is amended by:

■ 1. Revising the heading and entries for § 1.1502–13(f)(7) in paragraph (a)(6)(ii).

■ 2. Redesignating *Examples 4, 5, 6, 7,* and *8* as *Examples 5, 6, 7, 8,* and *9* respectively and adding a new *Example 4* to paragraph (f)(7)(i).

The revision and addition reads as follows:

§ 1.1502–13 Intercompany transactions.

(a) * * *

(6) * * *

(ii) * * *

Stock of members. (§ 1.1502–13(f)(7))

Example 1. Dividend exclusion and property distribution.

Example 2. Excess loss accounts.

Example 3. Intercompany reorganizations.

Example 4. All cash intercompany reorganization under section 368(a)(1)(D).

Example 5. Stock redemptions and distributions.

Example 6. Intercompany stock sale followed by section 332 liquidation.

Example 7. Intercompany stock sale followed by section 355 distribution.

* * * * *

(f) * * *

(7) * * *

(i) * * *

Example 4. All cash intercompany reorganization under section 368(a)(1)(D). (a) Facts. P owns all of the stock of M and B. M owns all of the stock of S with a basis of $25. On January 1 of Year 2, the fair market value of S's assets and its stock is $100, and S sells all of its assets to B for $100 cash and liquidates. The transaction qualifies as a reorganization described in section 368(a)(1)(D). Pursuant to § 1.368–2(l), B will be deemed to issue a nominal share of B stock to S in addition to the $100 of cash actually exchanged for the S assets, and S will be deemed to distribute all of the consideration to M. M will be deemed to distribute the nominal share of B stock to P.

(b) *Treatment as a section 301 distribution.* The sale of S's assets to B is a transaction to which paragraph (f)(3) of this section applies. In addition to the nominal share issued by B to S under § 1.368–2(l), S is treated as receiving additional B stock with a fair market value of $100 (in lieu of the $100) and, under section 358, a basis of $25 which S distributes to M in liquidation. Immediately after the sale, the B stock (with the exception of the nominal share which is still held by M) received by M is treated as redeemed for $100, and the redemption is treated under section 302(d) as a distribution to which section 301 applies. M's basis of $25 in the B stock is reduced under § 1.1502–32(b)(3)(v), resulting in an excess loss account of $75 in the nominal share. (See § 1.302–2(c)). M's deemed distribution of the nominal share of B stock to P under § 1.368–2(l) will result in M generating an

intercompany gain under section 311(b) of $75, to be subsequently taken into account under the matching and acceleration rules.

* * * * *

Approved: December 14, 2009.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–30170 Filed 12–17–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

RIN 0596–AB86

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (the Department) is issuing this final rule to comply with a June 30, 2009, Federal District Court order that has the effect of reinstating the National Forest System Land and Resource Management Planning Rule of November 9, 2000, as amended (2000 rule). This action announces the court's decision and takes the ministerial (formal) action of reinstating the rule in the Code of Federal Regulations. This action also makes technical amendments to that rule, including the interpretative rules issued in 2001 and 2004, to update transition provisions that will be in effect until a new planning rule is issued, as announced elsewhere in today's **Federal Register**.

DATES: *Effective Date:* This rule is effective December 18, 2009.

ADDRESSES: You can send a written request for more information to the Director, Ecosystem Management Coordination Staff, Forest Service, USDA, Mail Stop 1104, 1400 Independence Avenue, SW., Washington, DC 20250–1104. For more information, including an electronic copy of the 2000 rule and amendments see *http://www.fs.fed.us/emc/nfma/2000_planning_rule.html.*

FOR FURTHER INFORMATION CONTACT: Ecosystem Management Coordination staff's Assistant Director for Planning Ric Rine at (202) 205–1022 or Planning Specialist Regis Terney at (202) 205–1552.

SUPPLEMENTARY INFORMATION:

Background

The 2000 National Forest System Land and Resource Management Planning Rule as amended (2000 rule) is available online at *http://www.fs.fed.us/emc/nfma/2000_planning_rule.html. See also* final rule at 65 FR 67568 (Nov. 9, 2000); amendments at 67 FR 35434 (May 20, 2002); 68 FR 53297 (Sept. 10, 2003); and interpretative rules at 66 FR 1865 (Jan. 10, 2001) and 69 FR 58057 (Sept. 29, 2004). Although this rule is now in effect as a consequence of a court injunction, it is not found in the most recent version of the Code of Federal Regulations (CFR). This final rule reinstates the rule in the Code of Federal Regulations. In addition, the Department is making several technical amendments to the final rule.

Reinstating the 2000 Rule

The Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476 *et seq.*), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949 *et seq.;* 16 U.S.C. 1601–1614), requires the Secretary of Agriculture (the Secretary) to issue regulations under the principles of the Multiple-Use Sustained-Yield Act of 1960 (MUSYA) that set up the process for the development and revision of land management plans (16 U.S.C. 1604(g)).

The first planning rule, adopted in 1979, was amended on September 30, 1982 (47 FR 43037) (1982 rule). The 1982 rule was itself amended, in part, on June 24, 1983 (48 FR 29122) and on September 7, 1983 (48 FR 40383). The 1982 rule, as amended, has guided the development, amendment, and revision of all the land management plans currently in effect throughout the National Forest System (NFS).

The Department has undertaken rulemaking several times to revise the planning rule provisions. The Forest Service published an advance notice of proposed rulemaking on February 15, 1991 (56 FR 6508) for possible revisions to the 1982 rule. The Forest Service published a proposed rule on April 13, 1995 (60 FR 18886); however, the Secretary chose not to continue with that proposal. Another proposed rule was published on October 5, 1999 (64 FR 54074), and the 2000 rule was issued on November 9, 2000 (65 FR 67514). Shortly after the issuance of the 2000 rule, a review of the rule found that it would be unworkable. The Department proposed a new planning rule on December 6, 2002 (67 FR 72770).

In the meantime, on February 16, 2001, a coalition of twelve environmental groups sued the Department in Federal District Court to challenge the validity of the 2000 rule. The district court did not rule on the merits of plaintiffs' claims. Instead, the plaintiffs stipulated to a dismissal shortly after the Department issued a new planning rule to take the place of the 2000 rule (*Citizens for Better Forestry* v. *USDA,* No. 01–0728 (N.D. Cal. March 7, 2005) (Stipulation and Order dismissing case with prejudice)).

The 2005 rule, intended to replace the 2000 rule, was issued on January 5, 2005 (70 FR 1055). Shortly thereafter, Citizens for Better Forestry and others challenged it in Federal District Court. On March 30, 2007, the United States District Court for the Northern District of California enjoined the Department from further carrying out the 2005 rule pending additional steps to comply with the court's opinion with respect to the Administrative Procedure Act (APA), the Endangered Species Act (ESA), and the National Environmental Policy Act (NEPA) (*Citizens for Better Forestry* v. *USDA,* 481 F. Supp. 2d 1059 (N.D. Cal. 2007)). The effect of the injunction against the 2005 rule was to reinstate the 2000 rule (the rule previously in effect).

To respond to the district court's injunction of the 2005 rule, the Forest Service proposed a new planning rule. A notice of intent to prepare an environmental impact statement (EIS) was published in the **Federal Register** on May 11, 2007 (72 FR 26775) with a public comment period ending June 11, 2007. The proposed rule was published on August 23, 2007 (72 FR 48514), and the notice of availability for the supporting draft EIS was published in the **Federal Register** on August 31, 2007 (72 FR 50368). The notice of availability of the final EIS was published in the **Federal Register** on February 15, 2008 (73 FR 8869) and the final rule was issued and published in the **Federal Register** on April 21, 2008 (73 FR 21468). Citizens for Better Forestry and others promptly challenged the 2008 rule in court.

On June 30, 2009, the United States District Court for the Northern District of California invalidated the Forest Service's 2008 rule, holding that it was developed in violation of NEPA and ESA. The district court vacated the 2008 rule, enjoined the USDA from further implementing it and remanded it to the USDA for further proceedings (*Citizens for Better Forestry* v. *USDA,* 632 F. Supp. 2d 968 (N.D. Cal. 2009)). The court stated that, although the effect of invalidating an agency rule is to reinstate the rule previously in force, the Agency may choose whether to reinstate the 2000 rule or the 1982 rule.

(See court decision available online at *http://www.fs.fed.us/emc/nfma/index.htm.*)

The district court's order allowing the Forest Service to choose either the 2000 rule or the 1982 rule did not eliminate the responsibility to follow appropriate procedures involved in making that choice. Under established legal principles, in circumstances like those here, the 2000 rule was immediately back in effect, without any process: ''The effect of invalidating an agency rule is to reinstate the rule previously in effect,'' *Paulsen* v. *Daniels,* 413 F. 3d 999, 1008 (9th Cir. 2005). A return to the 1982 rule, however, would require the entire lengthy process of notice and comment rulemaking, which includes issuing a proposed rule for public review and comment before issuing a final rule. Re-issuing the 1982 rule is unnecessary because the transition provision of the 2000 rule will allow the Forest Service to use the provisions of the 1982 rule in revising and amending plans until a new rule is issued. Furthermore, because the Department has announced that a new rulemaking is in order, as announced elsewhere in today's **Federal Register,** to re-issue the 1982 rule for an interim time period would be a costly and time-consuming distraction.

Therefore, the Department has determined that the 2000 rule, as amended in 2002 and 2003 and as clarified by interpretative rules issued in 2001 and 2004, is now in effect, and should be reinstated in the Code of Federal Regulations.

Technical Amendments

The 2000 rule included provisions for an orderly transition from planning under the prior, 1982 rule (36 CFR 219.35). The Forest Service expects that until the Department issues a new rule, responsible officials will continue to take advantage of the 2000 rule's transition provisions to amend or revise plans. See Forest Service memorandum of July 15, 2009, signed by Joel Holtrop, Deputy Chief for National Forest System. The memorandum is available online at *http://www.fs.fed.us/emc/nfma/2000_planning_rule.html.*

However, the time frames described in the transition provisions are out of date. Therefore, the Department has decided to update the wording of the 2000 rule's transition provisions to provide that the transition will extend until a new planning rule is issued. In addition, unnecessary wording is deleted in the transition section and interpretative rules issued in 2001 and 2004 and the reference in the 2001 interpretative rule to the optional appeal procedures is being corrected.

Need To Update Transition Provisions With Respect to Plan Revisions and Amendments

36 CFR 219.35(a). The Department is not changing paragraph (a) of section 219.35, but acknowledges that a definitive interpretation is in order. Paragraph (a) provides that the transition period ends upon completion of the revision process for each unit of the NFS, and that during that period the responsible official must consider the best available science in implementing and, if appropriate, amending the current plan. The Tenth Circuit Court of Appeals has interpreted this paragraph to mean that the transition period for each unit of the NFS ends upon a plan revision developed and completed under provisions of the 1982 rule, as well as revisions completed in accordance with the 2000 rule process (*Utah Environmental Congress* v. *Troyer,* 479 F. 3d 1269 (10th Cir. 2007)). The court held that as a consequence, paragraph (a)'s requirement that the best available science be considered in amending and implementing current plans ''encompass[ed] only plans that pre-dated the 2000 planning rules,'' 479 F. 3d at 1281. Under this reasoning, the requirement to consider the best available science would not apply on a forest that completed revision after the issuance of the 2000 rule even if the 1982 rule provisions were used for the revision.

The Department's position is that the purpose of section 219.35(a) has always been, and continues to be, that the transition period for each forest ends upon the completion of the revision using the process of the 2000 rule. That intent is made evident by the cross-reference in paragraph (a) to section 219.9, the revision section of the 2000 rule. If a forest plan has not been revised using the 2000 rule process, the transition periods of sections 219.35(b) and (d) apply. Furthermore, on a unit where the plan has not been revised under the 2000 rule process, there must be consideration of the best available science when making project decisions or amending the plan. The reference in the paragraph to ''the current plan'' simply means the plan in effect during transition, prior to plan revision using the 2000 rule process.

36 CFR 219.35(b). The transition provision at 219.35(b) originally provided that planning initiated under the 1982 rule prior to November 9, 2000, the date the 2000 rule was issued, may continue under the provisions of that rule, instead of adjusting to the requirements of the 2000 rule (65 FR 67579 (Nov. 9, 2000)). However, shortly after the 2000 rule was issued, the Department determined that it was unworkable and announced the intent to issue a new rule in the December 3, 2001, Semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions. So that planning need not comply with the requirements of the 2000 rule, the Department extended the rule's transition period until the issuance of the new rule, and allowed the responsible official to elect, not only to continue, but also to initiate, plan amendments or revisions under the provisions of the 1982 rule.

The Department extended the transition provisions in paragraph (b) twice; the most recent extension, issued as an interim final rule on May 20, 2002, provides that the plan amendment or revision process may be continued or initiated under the provisions of the 1982 planning regulations under certain circumstances. The interim final rule said use of the transition provisions can continue ''[u]ntil the Department promulgates the revised final planning regulations announced in the December 3, 2001, Semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions'' at 219.35(b) 67 FR 35434 (May 20, 2002). This transition provision also explained what was meant by initiation of a plan amendment or revision.

Because paragraph (b) refers to the rulemaking process that resulted in the 2005 rule, which the district court held invalid, the Department is updating this paragraph to clarify that the transition will extend until the issuance of a rule replacing the current 2000 rule. The notice of intent to prepare an EIS for a new rule appears elsewhere in today's **Federal Register.** The Department is also deleting the unnecessary explanation regarding initiation of plan amendment or revision.

Simply put, the changes to paragraph (b) ensure that, until a new planning rule is issued, responsible officials may continue to revise or amend land management plans under either the 1982 rule provisions or the 2000 rule provisions.

Need To Update the Time Frame for Projects' Conformance to the 2000 Rule

36 CFR 219.35(d). The 2000 rule includes project-specific provisions, and, at 219.35(d), set November 9, 2003, as the deadline for compliance with those provisions at 65 FR 67579 (November 9, 2000). On September 10, 2003, the Department extended this transition period ''until the Department promulgates the final planning regulations published as proposed on

December 6, 2002 (67 FR 72770,'' by amending the wording of 36 CFR 219.35(d) at 68 FR 53297 (Sept. 10, 2003). Because this provision refers to the rulemaking process that resulted in the 2005 rule, which was held invalid, the Department is updating 36 CFR 219.35(d) to clarify that the transition will extend until the issuance of a rule superseding the current 2000 rule.

Therefore, until the Department issues a new planning rule, the transition wording of the 2000 rule exempts project and activity decisions from the rule's project-specific requirements. As provided in paragraph (a), during the transition the responsible official must consider the best available science when developing and carrying out projects.

Note that 36 CFR 219.35(g) says that within 1 year of November 9, 2000, the Chief of the Forest Service must establish a schedule for completion of the revision process for each unit of the National Forest System. The Chief established the schedule, and the Chiefs schedule is now available online at *http://www.fs.fed.us/emc/nfma/includes/LRMPschedule.pdf.*

Need To Correct the 2001 Interpretative Rule With Respect to the Administrative Review Procedures and Delete Unnecessary Wording

36 CFR 219.35 Appendix A. On January 10, 2001 (66 FR 1864), the Department published a interpretative rule related to 36 CFR 219.35(b) to make explicit its intent that a responsible official's option of using the provisions of the 1982 rule included the further option of providing an administrative appeal opportunity, in accordance with 36 CFR part 217, in effect before the 2000 rule was issued, or the objection opportunity set out in the 2000 rule. This interpretative rule was published as Appendix A to Section 219.35, ''Interpretive Rule Related to Paragraph 219.35(b)'' to explain how section 219.32 (regarding objections) and section 219.35(b) (a transition provision) operate together.

This interpretative rule cites ''36 CFR part 217'' twice. However, citing 36 CFR part 217 is not appropriate because that part no longer exists and has not been codified in the CFR since 2000, and refers to the July 1, 2000, revision of the CFR that is out of date. This reference is likely to confuse the public. Therefore, the Department is correcting Appendix A to Section 219.35 of the 2000 rule.

In the place of 36 CFR part 217 the corrected interpretative rule identifies these procedures as the ''optional appeal procedures available during the planning rule transition period'' and references the **Federal Register** notices that had established the procedures formerly codified at 36 CFR part 217. The ''optional appeal procedures available during the planning rule transition period,'' are 54 FR 3357 (January 23, 1989), as amended at 54 FR 13807 (April 5, 1989); 54 FR 34509 (August 21, 1989); 55 FR 7895 (March 6, 1990); 56 FR 4918 (February 6, 1991); 56 FR 46550 (September 13, 1991); and 58 FR 58915 (November 4, 1993). The ''optional appeal procedures available during the planning rule transition period,'' are available at *http://www.fs.fed.us/emc/applit/includes/PlanAppealProcedures DuringTransition.pdf.*

The interpretative rule also explained what was meant by initiation of a plan amendment or revision; the Department is deleting this unnecessary provision.

The effect of these changes is simply that responsible officials can continue to choose either the appeals process for plan revisions or the objections process for plan revisions established in the 2000 rule.

Need To Delete Unnecessary Wording in 2004 Interpretative Rule

36 CFR 219.35 Appendix B. On September 29, 2004, the Department published an interpretative rule related to 36 CFR 219.35(a) and (b), to clarify the intent of the transition provisions in those paragraphs. The Department published the interpretative rule as ''Appendix B to Section 219.35, Interpretative Rule Related to Paragraphs 219.35(a) and (b)'' (69 FR 58057). In explaining the duration of the transition, the interpretative rule included two sentences that referred to the proposed rule published on December 6, 2002, and stated that a final rule had yet to be issued. The Department is deleting these unnecessary sentences.

Good Cause Statement

The Department has determined, pursuant to 5 U.S.C. 553(b), that prior notice and opportunity for public comment on this rulemaking are ''impractical, unnecessary, and contrary to the public interest.'' This rulemaking is undertaken to reinstate in the Code of Federal Regulations the planning rule now in effect and to update and clarify the transition time periods set out in that rule. This rulemaking also identifies the optional appeal process available during the transition.

As explained earlier in this notice, the 2000 rule is currently in effect. The reinstatement of the entire 2000 rule in the Code of Federal Regulations, therefore, is simply a housekeeping matter, to make the rule readily available to the public.

Notice and comment opportunities for the transition updates in paragraphs (b) and (d) are unnecessary, as they simply reflect the Department's long held intent, evidenced by the 2001, 2002, and 2003 extensions and the 2004 interpretative rule, to allow the continued use of the 1982 planning rule provisions until a successful rulemaking to replace the 2000 rule is accomplished. Additionally, the deletion in paragraph (b) of the explanation of ''initiation'' of plan amendments or revisions does not in any way change the effect of the rule. Furthermore, notice and comment rulemaking for this planning rule is impractical and against the public interest, as it would distract the Department's and the public's attention from the more pressing task at hand: to develop, through notice and comment rulemaking, a new, replacement planning rule. Notice and comment rulemaking to reinstate the 2000 rule would delay the issuance of a new rule. It is also likely that the confusion caused by two simultaneous notice and comment rulemakings for planning would not be in the public interest. With respect to the interpretative rules, good cause is not needed to exempt them from the notice and comment requirements of the Administrative Procedure Act. In any event, the minor changes to the interpretative rules do not affect the Department's interpretation of the 2000 rule.

This rulemaking merely continues the status quo for forest planning by updating 36 CFR Part 219 to reflect the fact that the 2008 rule has been held invalid and the 2000 rule is therefore in place until new planning regulations are issued.

Regulatory Certifications

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is, therefore, not subject to review by the Office of Management and Budget. Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of Unfunded Mandates Reform Act of 1995. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of constitutionally protected private property.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or reporting requirements included in the rule have been approved by the Office of Management and Budget (OMB) and assigned control number 0596–0158.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. As adopted, (1) All state and local laws and regulations that are in conflict with this rule or which would impede its full implementation are to be preempted; (2) No retroactive effect is given to this rule; and (3) It does not require administrative proceedings before parties may file suit in court challenging its provisions. Several respondents commented about the Federal Government's authority to preempt state and local laws. The Department has carefully reviewed this language and finds that this is entirely consistent with the legal responsibilities of the Federal Government.

The Department's compliance with these statutes and Executive orders for the rule is discussed in the November 9, 2000, **Federal Register** notice.

List of Subjects in 36 CFR Part 219

Administrative practice and procedure, Environmental impact statements, Indians, Intergovernmental relations, National forests, Reporting and recordkeeping requirements, Science and technology.

■ Therefore, for the reasons set forth in the preamble, part 219 of title 36 of the Code of Federal Regulations is revised to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

Purpose and Principles

Sec.
219.1 Purpose.
219.2 Principles.

The Framework for Planning

219.3 Overview.
219.4 Identification and consideration of issues.
219.5 Information development and interpretation.
219.6 Proposed actions.
219.7 Plan decisions.
219.8 Amendment.
219.9 Revision.
219.10 Site-specific decisions.
219.11 Monitoring and evaluation for adaptive management.

Collaborative Planning for Sustainability

219.12 Collaboration and cooperatively developed landscape goals.
219.13 Coordination among Federal agencies.
219.14 Involvement of State and local governments.
219.15 Interaction with American Indian tribes and Alaska Natives.
219.16 Relationships with interested individuals and organizations.
219.17 Interaction with private landowners.
219.18 Role of advisory committees.

Ecological, Social, and Economic Sustainability

219.19 Ecological, social, and economic sustainability.
219.20 Ecological sustainability.
219.21 Social and economic sustainability.

The Contribution of Science

219.22 The overall role of science in planning.
219.23 The role of science in assessments, analyses, and monitoring.
219.24 Science consistency evaluations.
219.25 Science advisory boards.

Special Considerations

219.26 Identifying and designating suitable uses.
219.27 Special designations.
219.28 Determination of land suitable for timber harvest.
219.29 Limitation on timber harvest.

Planning Documentation

219.30 Plan documentation.
219.31 Maintenance of the plan and planning records.

Objections and Appeals

219.32 Objections to amendments or revisions.
219.33 Appeals of site-specific decisions.

Applicability and Transition

219.34 Applicability.
219.35 Transition.

Definitions

219.36 Definitions.

Subpart B [Reserved]

Authority: 5 U.S.C. 301; and Secs. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613).

Subpart A—National Forest System Land and Resource Management Planning

Purpose and Principles

§ 219.1 Purpose.

(a) Land and resource management planning guides how the Forest Service will fulfill its stewardship of the natural resources of the National Forest System to fulfill the designated purposes of the national forests and grasslands and honor their unique place in American life. The regulations in this subpart set forth a process for amending and revising land and resource management plans, hereafter referred to as plans, for the National Forest System and for monitoring the results of plan implementation under the Forest and Rangeland Renewable Resources Act of 1974, as amended by the National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.* The regulations in this subpart also guide the selection and implementation of site-specific actions. The principal authorities governing the development and the management of the National Forest System include: The Organic Administration Act of 1897, as amended (16 U.S.C. 473 *et seq.*); the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*); the Wilderness Act (16 U.S.C. 1121 *et seq.*); the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); the Forest and Rangeland Renewable Resource Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*); and the Clean Water Act of 1948, as amended by the Federal Water Pollution Control Act Amendments of 1977 and the Water Quality Act of 1987 and other laws (33 U.S.C. 1251 *et seq.,* 1323 *et seq.*).

(b) The National Forest System constitutes an extraordinary national legacy created by people of vision and preserved for future generations by diligent and far-sighted public servants and citizens. These are the peoples' lands, emblems of the nation's democratic traditions.

(1) The national forests and grasslands provide a wide variety of uses, values,

products, and services that are important to many people, including outdoor recreation, forage, timber, wildlife and fish, biological diversity, productive soils, clean air and water, and minerals. They also afford intangible benefits such as beauty, inspiration, and wonder.

(2) To assure the continuation of this array of benefits, this regulation affirms sustainability as the overall goal for stewardship of the natural resources of each national forest and grassland consistent with the laws that guide management of these lands.

(3) Sustainability, composed of interdependent ecological, social, and economic elements, embodies the principles of multiple-use and sustained-yield without impairment to the productivity of the land. Sustainability means meeting needs of the present generation without compromising the ability of future generations to meet their needs. Planning contributes to social and economic sustainability without compromising the basic composition, structure, and functioning of ecological systems. The progress toward achievement of sustainability is assessed through monitoring and evaluation.

§ 219.2 Principles.

The planning regulations in this subpart are based on the following principles:

(a) The first priority for planning to guide management of the National Forest System is to maintain or restore ecological sustainability of national forests and grasslands to provide for a wide variety of uses, values, products, and services. The benefits sought from these lands depend upon long-term ecological sustainability. Considering increased human uses, it is essential that uses of today do not impair the functioning of ecological processes and the ability of these natural resources to contribute to sustainability in the future.

(1) Planning provides the guidance for maintaining or restoring the diversity of plant and animal communities and the productive capacity of ecological systems, the core elements of ecological sustainability.

(2) Planning is based on science and other knowledge, including the use of scientifically based strategies for sustainability and benefits from independent scientific peer review.

(3) Planning is based on the temporal and spatial scales necessary for sustainability.

(4) Planning includes the monitoring and evaluation of the achievement of goals.

(b) Planning contributes to social and economic sustainability by providing for a wide variety of uses, values, products, and services without compromising the basic composition, structure, and function of ecological systems.

(1) Planning recognizes and fosters a broad-based understanding of the interdependence of national forests and grasslands with economies and communities.

(2) Planning fosters strategies and actions that provide for human use in ways that contribute to long-term sustainability.

(c) Planning is efficiently integrated into the broader geographic, legal, and social landscape within which national forests and grasslands exist. Other agencies, governments, corporations, and citizens manage land in and around the national forests and grasslands. Planning, therefore, is outward looking with the goal of understanding the broader landscape in which the national forests and grasslands lie.

(1) Planning fosters coordination among all affected federal agencies.

(2) Planning proceeds in close cooperation with state, tribal, and local governments.

(3) Planning recognizes the rights of American Indian tribes and Alaska Natives.

(4) Planning is interdisciplinary, providing analyses and options that are responsive to a broad range of ecological, social, and economic.

(5) Planning acknowledges the limits and variability of likely budgets.

(d) Planning meaningfully engages the American people in the stewardship of their national forests and grasslands. Just as the Forest Service can help the American people learn about the limits and capabilities of the national forests and grasslands, managers also should be guided by the knowledge and values of the American people.

(1) Planning encourages extensive collaborative citizen participation and builds upon the human resources in local communities and throughout the nation.

(2) Planning actively seeks and addresses key issues and promotes a shared vision of desired conditions.

(3) Planning and plans are understandable.

(4) Planning restores and maintains the trust of the American people in the management of the national forests and grasslands.

(e) Planning is an ongoing process, where decisions are adapted, as necessary, to address new issues, new information, and unforeseen events.

(1) Planning is innovative and practical.

(2) Planning is expeditious and efficient in achieving goals.

(f) Planning seeks to manage National Forest System resources in a combination that best serves the public interest without impairment of the productivity of the land consistent with the Multiple-Use Sustained-Yield Act of 1960.

The Framework for Planning

§ 219.3 Overview.

(a) *The planning framework.* Land and resource management planning is a flexible process for fitting solutions to the scope and scale of needed action. Planning, conducted according to the planning framework outlined in §§ 219.3 through 219.11, involves engaging the public (§§ 219.12 through 219.18) and applying the best available science (§§ 219.22 through 219.25) to contribute to sustainability (§§ 219.19 through 219.21) in the use and enjoyment of National Forest System lands.

(b) *Levels of planning.* Planning may be undertaken at the national, regional, national forest or grassland, and/or ranger district administrative levels depending on the scope and scale of issues.

(1) The Chief of the Forest Service is responsible for national planning. National planning includes the Forest Service national strategic plan required under the Government Performance and Results Act of 1993 (5 U.S.C. 306, 31 U.S.C. 1115–1119 and 9703–9704) that establishes national long-term goals, outcome measures, and strategies to be considered in managing the National Forest System and the Resources Planning Act Program (16 U.S.C. 1600).

(2) The Forest or Grassland Supervisor is the responsible official for a plan amendment or revision, except to the extent the Regional Forester or Chief decides to act as the responsible official.

(3) When appropriate, two or more Forest or Grassland Supervisors, one or more Regional Foresters, or the Chief of the Forest Service may undertake planning which may amend or revise one or more plans.

(4) The Chief of the Forest Service, Regional Foresters, National Forest and Grassland Supervisors, or District Rangers may authorize and implement site-specific actions.

(c) *An interdisciplinary, collaborative approach to planning.* An interdisciplinary, collaborative approach to planning may be achieved by engaging the skills and interests of appropriate combinations of Forest Service staff, consultants, contractors, other federal agencies, states, American

Indian tribes, Alaska Natives, or local government personnel, or other interested or affected people consistent with applicable laws.

(d) *Key elements.* The planning cycle begins with the identification and consideration of issues and concludes with the monitoring and evaluation of results. Based upon the scope and scale of issues, planning includes one or more of the following key elements:

(1) Identification and consideration of issues (§ 219.4);

(2) Information development and interpretation (§ 219.5);

(3) Proposed actions (§ 219.6);

(4) Plan decisions (§ 219.7);

(5) Amendment (§ 219.8);

(6) Revision (§ 219.9);

(7) Site-specific decisions (§ 219.10); and

(8) Monitoring and evaluation for adaptive management (§ 219.11).

§ 219.4 Identification and consideration of issues.

(a) *Origination of issues.* Issues may originate from a variety of sources including, but are not limited to: Inventories, assessments, analyses, monitoring and evaluation of projects; discussions among people and proposals by organizations or governments interested in or affected by National Forest System management; Presidential, Departmental, and Forest Service conservation leadership initiatives; cooperatively developed landscape goals (§ 219.12(b)); evaluation of sustainability (§ 219.9(b)(4)); enactment of new laws; policies such as the Forest Service national strategic plan; and applications for authorization for occupancy and use of National Forest System lands.

(b) *Consideration of issues.* The responsible official has the discretion to determine, at any time, whether and to what extent an issue is appropriate for consideration.

(1) In making this determination, the responsible official should consider:

(i) The scope, complexity, and geographic scale of potential actions that may address an issue;

(ii) Statutory requirements;

(iii) Organizational and community capabilities and available resources, including current and likely Forest Service budgets;

(iv) The scientific basis and merit of available data and analyses;

(v) The relationship of possible actions to the Forest Service national strategic plan, other existing plans, adopted conservation strategies, biological opinions, or other strategies applicable within all or a portion of the plan area; and

(vi) The opinions of interested or affected individuals, organizations, or other entities and the social and cultural values related to an issue.

(2) The responsible official should consider the extent to which addressing the issue relates to or provides:

(i) Opportunities to contribute to the achievement of cooperatively developed landscape goals;

(ii) Opportunities for the national forests and grasslands to contribute to the restoration or maintenance of ecological sustainability, including maintenance or restoration of watershed function, such as water flow regimes to benefit aquatic resources, groundwater recharge, municipal water supply, or other uses, and maintaining or restoring ecological conditions needed for ecosystem and species diversity;

(iii) Opportunities for the national forests or grasslands to contribute to social and economic sustainability;

(iv) Opportunities to recover threatened or endangered species and maintain or restore their habitat;

(v) The potential for negative environmental effects, including human health, economic and social effects, upon minority and low income communities;

(vi) Opportunities to maintain or restore ecological conditions that are similar to the biological and physical range of expected variability (§ 219.20(b)(1)); and

(vii) Opportunities to contribute to knowledge about and preservation of historic and cultural resources.

§ 219.5 Information development and interpretation.

If the responsible official determines an issue should receive consideration, the responsible official should review relevant information such as inventories, broad-scale assessments, local analyses, or monitoring results to determine if additional information is desirable and if it can be obtained at a reasonable cost and in a timely manner. The responsible official, at his or her discretion, may choose the methods and determine the scope of information development and interpretation for an issue under consideration. A broad-scale assessment or a local analysis may be developed or supplemented if appropriate to the scope and scale of an issue. Broad-scale assessments, local analyses, monitoring results, and other studies are not site-specific or plan decisions or proposals for agency action (§ 219.6(a)) subject to Forest Service NEPA procedures.

(a) *Broad-scale assessments.* Broad-scale assessments provide information regarding ecological, economic, or social issues that are broad in geographic scale, sometimes crossing Forest Service regional administrative boundaries. Ecological information and analyses that may be provided in an assessment are addressed in § 219.20(a). Social and economic information and analyses that may be provided in an assessment are addressed in § 219.21(a).

(1) Broad-scale assessment should provide the following as appropriate:

(i) Findings and conclusions that describe historic conditions, current status, and future trends of ecological, social, and/or economic conditions, their relationship to sustainability, and the principal factors contributing to those conditions and trends. The responsible official may use these findings and conclusions to identify other issues (§ 219.4), develop proposals for action (§ 219.6), or for other purposes.

(ii) Identification of needs for additional research to develop new information or address conflicting interpretations of existing information.

(2) Station Directors and Regional Foresters must have joint responsibility for Forest Service participation in broad-scale assessments. Each broad-scale assessment should be designed and conducted with the assistance of scientists, resource professionals, governmental entities, and other individuals and organizations knowledgeable of the assessment area.

(b) *Local analyses.* Local analyses provide ecological, social, or economic information as deemed appropriate by the responsible official. Local analyses may cover watersheds, ecological units, and social and economic units, and may tier to or provide information to update a broad-scale assessment. Local analyses should provide the following, as appropriate:

(1) Characterization of the area of analysis;

(2) Description of issues within the analysis area;

(3) Description of current conditions;

(4) Description of likely future conditions;

(5) Synthesis and interpretation of information; and

(6) Recommendations for proposals (§ 219.6(a)) or identification of other issues (§ 219.4).

§ 219.6 Proposed actions.

(a) *Proposal.* The responsible official may propose to amend or revise a plan, propose a site-specific action, or both.

(b) *NEPA requirements.* Unless otherwise provided by law, the responsible official must analyze the effects of the proposal and alternative(s) in conformance with Forest Service

NEPA procedures. The responsible official may use issues identified and information reviewed pursuant to Secs. 219.4–219.5 for scoping required in Forest Service NEPA procedures.

§ 219.7 Plan decisions.

Plan decisions guide or limit uses of National Forest System resources and provide the basis for future agency action. Plan decisions link the requirements of laws, regulations, Executive Orders, policies, and the Forest Service national strategic plan to specific national forests and grasslands. While plan decisions generally do not commit resources to a site-specific action, plan decisions provide a framework for authorizing site-specific actions that may commit resources. In making decisions, the responsible official should seek to manage National Forest System resources in a combination that best serves the public interest without impairment of the productivity of the land consistent with the Multiple-Use Sustained-Yield Act of 1960. Plan decisions may apply to all or part of a plan area. Paragraphs (a) through (e) of this section describe the decisions in a plan.

(a) *Desired resource conditions.* These plan decisions define the resource conditions sought within all or portions of the plan area. Desired resource conditions may include, but are not limited to, the desired watershed and ecological conditions and aquatic and terrestrial habitat characteristics.

(b) *Objectives.* These plan decisions are concise statements describing measurable results intended to contribute to sustainability (§ 219.19), including a desired level of uses, values, products, and services, assuming current or likely budgets and considering other spending levels as appropriate. Objectives include an estimate of the time and resources needed for their completion.

(c) *Standards.* These plan decisions are the requirements and limitations for land uses and management actions necessary for the achievement of desired conditions and objectives and compliance with applicable laws, regulations, Executive Orders, and policies. Standards include, but are not limited to:

(1) Limitations on even-aged timber harvest methods;

(2) Maximum size openings from timber harvest;

(3) Methods for achieving aesthetic objectives by blending the boundaries of vegetation treatments; and

(4) Other requirements to achieve multiple-use of the national forests and grasslands.

(d) *Designation of suitable land uses.* These plan decisions identify lands within the National Forest System that are or are not suitable for specific uses (§ 219.26), including, but not limited to: the transportation system; livestock grazing; special designations as described in § 219.27; and lands where timber production is an objective (§ 219.28).

(e) *Monitoring strategy.* A monitoring strategy is required by each plan as described in § 219.11(a).

§ 219.8 Amendment.

(a) *Amending plans.* A plan amendment may add, modify, or rescind one or more of the decisions of a plan (§ 219.7). An amendment decision must be based on the identification and consideration of issues (§ 219.4), applicable information (§ 219.5), and an analysis of the effects of the proposed amendment (§ 219.6). In developing an amendment, the responsible official must provide opportunities for collaboration consistent with § 219.12 through § 219.18.

(b) *Environmental review of a proposed plan amendment.* For each proposal for a plan amendment, the responsible official must complete appropriate environmental analyses and public involvement in accordance with Forest Service NEPA procedures. A proposed amendment that may create a significant environmental effect and thus require preparation of an environmental impact statement is considered to be a significant change in the plan. If a proposal for amendment requires the preparation of an environmental impact statement, the responsible official must give public notice and an opportunity to comment on the draft environmental impact statement for at least 90 calendar days.

§ 219.9 Revision.

(a) *Application of the revision process.* Revision of a plan is required by 16 U.S.C. 1604(f)(5). The revision process is a review of the overall management of a unit of the National Forest System and an opportunity to consider the likely results if plan decisions were to remain in effect.

(b) *Initiating revision.* To begin the revision process, the responsible official must:

(1) Provide opportunities for collaboration consistent with § 219.12 through § 219.18;

(2) Summarize those issues the responsible official determines to be appropriate for consideration (§ 219.4), any relevant inventories, new data, findings and conclusions from appropriate broad-scale assessments and local analyses, monitoring and evaluation results, new or revised Forest Service policies, relevant portions of the Forest Service national strategic plan, and changes in circumstances affecting the entire or significant portions of the plan area;

(3) Develop the information and complete the analyses described in § 219.20(a) and § 219.21(a);

(4) Evaluate the effectiveness of the current plan in contributing to sustainability (Secs. 219.19–219.21) based on the information, analyses, and requirements described in § 219.20(a) and (b) and § 219.21(a) and (b), and provide for an independent scientific peer review (§ 219.22) of the evaluation;

(5) Identify new proposals for special areas, special designation, or for recommendation as wilderness (§ 219.27);

(6) Identify specific watersheds in need of protective or restoration measures;

(7) Identify lands classified as not suitable for timber production (§ 219.28);

(8) Identify and evaluate inventoried roadless areas and unroaded areas based on the information, analyses, and requirements in § 219.20(a) and § 219.21(a). During the plan revision process or at other times as deemed appropriate, the responsible official must determine which inventoried roadless areas and unroaded areas warrant additional protection and the level of protection to be afforded; and

(9) Develop an estimate of outcomes that would be anticipated, including uses, values, products, or services, for a 15-year period following initiation of the revision process, if the plan decisions in effect at the time the revision process began remain in effect.

(c) *Public notice of revision process and review of information.* After the responsible official has compiled the information required under paragraph (b) of this section, the responsible official must give public notice of the plan revision process and make the information compiled under paragraph (b) of this section available for public comment for at least 45 calendar days.

(d) *Notice of Intent.* Based upon the information compiled under paragraph (b) of this section and any comments received during the comment period required under paragraph (c) of this section, the responsible official must publish a Notice of Intent to prepare an environmental impact statement to add, modify, remove, or continue in effect the decisions embodied in a plan. The responsible official must give the public notice and an opportunity to comment on the draft environmental impact

statement for at least 90 calendar days. Following public comment, the responsible official must oversee preparation of a final environmental impact statement in accordance with Forest Service NEPA procedures.

(e) *Final decision on plan revision.* The revision process is completed when the responsible official signs a record of decision for a plan revision.

§ 219.10 Site-specific decisions.

To the extent appropriate and practicable and subject to valid existing rights and appropriate statutes, the responsible official must provide opportunities for collaboration consistent with §§ 219.12 through 219.18, follow the planning framework described in §§ 219.4 through 219.6 and comply with § 219.11 to make site-specific decisions. All site-specific decisions, including authorized uses of land, must be consistent with the applicable plan. If a proposed site-specific decision is not consistent with the applicable plan, the responsible official may modify the proposed decision to make it consistent with the plan, reject the proposal; or amend the plan to authorize the action.

§ 219.11 Monitoring and evaluation for adaptive management.

(a) *Plan monitoring strategy.* Each plan must contain a practicable, effective, and efficient monitoring strategy to evaluate sustainability in the plan area (§§ 219.19 through 219.21). The strategy must require monitoring of appropriate plan decisions and characteristics of sustainability.

(1) *Monitoring and evaluation of ecological sustainability.* The plan monitoring strategy for the monitoring and evaluation of ecological sustainability must require monitoring of:

(i) *Ecosystem diversity.* Monitoring must be used to evaluate the status and trend of selected physical and biological characteristics of ecosystem diversity (§ 219.20(a)(1)). The plan monitoring strategy must document the reasons for selection of characteristics to be monitored, monitoring objectives, methodology, and designate critical values that will prompt reviews of plan decisions.

(ii) *Species diversity.* Monitoring must be used to evaluate focal species and species-at-risk as follows:

(A) The status and trends of ecological conditions known or suspected to support focal species and selected species-at-risk must be monitored. The plan monitoring strategy must document the reasons for the selection of species-at-risk for which ecological conditions are to be monitored, including the degree of risk to the species, the factors that put the species at risk, and the strength of association between ecological conditions and population dynamics.

(B) In addition to monitoring of ecological conditions, the plan monitoring strategy may require population monitoring for some focal species and some species-at-risk. This monitoring may be accomplished by a variety of methods including population occurrence and presence/absence data, sampling population characteristics, using population indices to track relative population trends, or inferring population status from ecological conditions.

(C) A decision by the responsible official to monitor populations and the responsible official's choice of methodologies for monitoring selected focal species and selected species-at-risk may be based upon factors that include, but are not limited to, the degree of risk to the species, the degree to which a species' life history characteristics lend themselves to monitoring, the reasons that a species is included in the list of focal species or species-at-risk, and the strength of association between ecological conditions and population dynamics. Monitoring of population trend is often appropriate in those cases where risk to species viability is high and population characteristics cannot be reliably inferred from ecological conditions. The reasons for selection of species, monitoring objectives, and methodologies must be documented as part of the plan monitoring strategy. Critical values that will prompt reviews of plan decisions must be designated in the monitoring strategy.

(iii) *Monitoring effectiveness.* As a part of the plan monitoring strategy, the responsible official must evaluate the effectiveness of selected characteristics of ecosystem diversity and species diversity in providing reliable information regarding ecological sustainability.

(2) *Monitoring and evaluation of social and economic sustainability.* The plan monitoring strategy for the monitoring and evaluation of social and economic sustainability should provide for periodic review of national, regional, and local supply and demand for products, services, and values. Special consideration should be given to those uses, values, products, and services that the National Forest System is uniquely poised to provide. Monitoring should improve the understanding of the National Forest System contributions to social and economic sustainability. The plan monitoring strategy must require the responsible official to evaluate the effectiveness of information and analyses described in § 219.21(a) in providing reliable information regarding social and economic sustainability.

(b) *Monitoring of site-specific actions.* The decision document authorizing a site-specific action should describe any required monitoring and evaluation for the site-specific action. The responsible official must determine that there is a reasonable expectation that anticipated funding is adequate to complete any required monitoring and evaluation prior to authorizing a site-specific action.

(c) *Monitoring methods.* Unless required by the monitoring strategy, monitoring methods may be changed to reflect new information without plan amendment or revision.

(d) *Use of monitoring information.* Where monitoring and evaluation is required by the plan monitoring strategy, the responsible official must ensure that monitoring information is used to determine one or more of the following:

(1) If site-specific actions are completed as specified in applicable decision documents;

(2) If the aggregated outcomes and effects of completed and ongoing actions are achieving or contributing to the desired conditions;

(3) If key assumptions identified for monitoring in plan decisions remain valid; and

(4) If plan or site-specific decisions need to be modified.

(e) *Coordination of monitoring activities.* To the extent practicable, monitoring and evaluation should be conducted jointly with other federal agencies, state, local, and tribal governments, scientific and academic communities, and others. In addition, the responsible official must provide appropriate opportunities for the public to be involved and utilize scientists as described in § 219.23.

(f) *Annual monitoring and evaluation report.* The responsible official must prepare a monitoring and evaluation report for the plan area within 6 months following the end of each fiscal year. The report must be maintained with the plan documents (§ 219.30(d)(5)), and include the following:

(1) A list or reference to monitoring required by the plan; and

(2) A summary of the results of monitoring and evaluation performed during the preceding fiscal year and appropriate results from previous years. The summary must include:

(i) A description of the progress toward achievement of desired conditions within the plan area; and

(ii) A description of the plan area's contribution to the achievement of applicable outcomes of the Forest Service national strategic plan.

Collaborative Planning for Sustainability

§ 219.12 Collaboration and cooperatively developed landscape goals.

(a) *Collaboration.* To promote sustainability, the responsible official must actively engage the American public, interested organizations, private landowners, state, local, and Tribal governments, federal agencies, and others in the stewardship of National Forest System lands. To engage people in the stewardship of National Forest System lands, the responsible official may assume many roles, such as leader, organizer, facilitator, or participant. The responsible official must provide early and frequent opportunities for people to participate openly and meaningfully in planning taking into account the diverse roles, jurisdictions, and responsibilities of interested and affected organizations, groups, and individuals. The responsible official has the discretion to determine how to provide these opportunities in the planning process.

(b) *Cooperatively developed landscape goals.* (1) The responsible official and other Forest Service employees involved in planning must invite and encourage others to engage in the collaborative development of landscape goals. Using information from broad-scale assessments or other available information, and subject to applicable laws, the responsible official may initiate or join ongoing collaborative efforts to develop or propose landscape goals for areas that include National Forest System lands.

(2) During collaborative efforts, responsible officials and other Forest Service employees, must communicate and foster understanding of the nation's declaration of environmental policy as set forth in section 101(b) of the National Environmental Policy Act, as amended (42 U.S.C. 4321–4347), which states that it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate federal plans, functions, programs, and resources to the end that the Nation may—

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

(v) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vi) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) Cooperatively developed landscape goals, whether the result of efforts initiated by the Forest Service or others, must be deemed an issue for the purposes under § 219.4.

§ 219.13 Coordination among Federal agencies.

The responsible official must provide early and frequent coordination with appropriate Federal agencies and may provide opportunities:

(a) For interested or affected Federal agencies to participate in the identification of issues and formulation of proposed actions;

(b) For the streamlined coordination of Federal agency policies, resource management plans, or programs; and

(c) The development, where appropriate and practicable, of joint resource management plans.

§ 219.14 Involvement of State and local governments.

The responsible official must provide early and frequent opportunities for State and local governments to:

(a) Participate in the planning process, including the identification of issues; and

(b) Contribute to the streamlined coordination of resource management plans or programs.

§ 219.15 Interaction with American Indian tribes and Alaska Natives.

(a) The Forest Service shares in the Federal Government's overall trust responsibility for federally recognized American Indian tribes and Alaska Natives.

(b) During planning, the responsible official must consider the government-to-government relationship between American Indian or Alaska Native tribal governments and the Federal Government.

(c) The responsible official must consult with and invite American Indian tribes and Alaska Natives to participate in the planning process to assist in:

(1) The early identification of treaty rights, treaty-protected resources, and American Indian tribe trust resources;

(2) The consideration of tribal data and resource knowledge provided by tribal representatives; and

(3) The consideration of tribal concerns and suggestions during decisionmaking.

§ 219.16 Relationships with interested individuals and organizations.

The responsible official must:

(a) Make planning information available to the extent allowed by law;

(b) Conduct planning processes that are fair, meaningful, and open to persons with diverse opinions;

(c) Provide early and frequent opportunities for participation in the identification of issues;

(d) Encourage interested individuals and organizations to work collaboratively with one another to improve understanding and develop cooperative landscape and other goals;

(e) Consult with individuals and organizations who can provide information about current and historic public uses within an assessment or plan area, about the location of unique and sensitive resources and values and cultural practices related to issues in the plan area; and

(f) Consult with scientific experts and other knowledgeable persons, as appropriate, during consideration of collaboratively developed landscape goals and other activities.

§ 219.17 Interaction with private landowners.

The responsible official must seek to collaborate with those who have control or authority over lands adjacent to or within the external boundaries of national forests or grasslands to identify:

(a) Local knowledge;

(b) Potential actions and partnership activities;

(c) Potential conditions and activities on the adjacent lands that may affect management of National Forest System lands, or vice versa; and

(d) Issues (§ 219.4).

§ 219.18 Role of advisory committees.

(a) *Advisory committees.* Advisory committees can provide an immediate, representative, and predictable structure within which public dialogue can occur and the Forest Service can develop relationships with diverse communities of interests. The responsible official may seek the assistance or advice from a committee, consistent with the requirements of the Federal Advisory Committee Act (5 U.S.C. app.) in determining whether there is a

reasonable basis to propose an action to address an issue. Each Forest or Grassland Supervisor must have access to an advisory committee with knowledge of local conditions and issues, although an advisory committee is not required for each national forest or grassland. Responsible officials may request establishment of advisory committees and recommend members to the Secretary of Agriculture. Advisory committees used by other agencies may be utilized through proper agreements.

(b) *Participation in other types of community-based groups.* When appropriate, the responsible official should consider participating in community-based groups organized for a variety of public purposes, particularly those groups organized to develop landscape goals (§ 219.12(b)).

Ecological, Social, and Economic Sustainability

§ 219.19 Ecological, social, and economic sustainability.

Sustainability, composed of interdependent ecological, social, and economic elements, embodies the Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 *et seq.*) without impairment to the productivity of the land and is the overall goal of management of the National Forest System. The first priority for stewardship of the national forests and grasslands is to maintain or restore ecological sustainability to provide a sustainable flow of uses, values, products, and services from these lands.

§ 219.20 Ecological sustainability.

To achieve ecological sustainability, the responsible official must ensure that plans provide for maintenance or restoration of ecosystems at appropriate spatial and temporal scales determined by the responsible official.

(a) *Ecological information and analyses.* Ecosystem diversity and species diversity are components of ecological sustainability. The planning process must include the development and analysis of information regarding these components at a variety of spatial and temporal scales. These scales include geographic areas such as bioregions and watersheds, scales of biological organization such as communities and species, and scales of time ranging from months to centuries. Information and analyses regarding the components of ecological sustainability may be identified, obtained, or developed through a variety of methods, including broad-scale assessments and local analyses (§ 219.5), and monitoring results (§ 219.11). For plan revisions, and to the extent the responsible official considers appropriate for plan amendments or site-specific decisions, the responsible official must develop or supplement the following information and analyses related to ecosystem and species diversity:

(1) *Characteristics of ecosystem and species diversity.* Characteristics of ecosystem and species diversity must be identified for assessing and monitoring ecological sustainability. In general, these identified characteristics should be consistent at various scales of analyses.

(i) *Ecosystem diversity.* Characteristics of ecosystem diversity include, but are not limited to:

(A) *Major vegetation types.* The composition, distribution, and abundance of the major vegetation types and successional stages of forest and grassland systems; the prevalence of invasive or noxious plant or animal species.

(B) *Water resources.* The diversity, abundance, and distribution of aquatic and riparian systems including streams, stream banks, coastal waters, estuaries, groundwater, lakes, wetlands, shorelines, riparian areas, and floodplains; stream channel morphology and condition, and flow regimes.

(C) *Soil resources.* Soil productivity; physical, chemical and biological properties; soil loss; and compaction.

(D) *Air resources.* Air quality, visibility, and other air resource values.

(E) *Focal species.* Focal species that provide insights to the larger ecological systems with which they are associated.

(ii) *Species diversity.* Characteristics of species diversity include, but are not limited to, the number, distribution, and geographic ranges of plant and animal species, including focal species and species-at-risk that serve as surrogate measures of species diversity. Species-at-risk and focal species must be identified for the plan area.

(2) *Evaluation of ecological sustainability.* Evaluations of ecological sustainability must be conducted at the scope and scale determined by the responsible official to be appropriate to the planning decision. These evaluations must describe the current status of ecosystem diversity and species diversity, risks to ecological sustainability, cumulative effects of human and natural disturbances, and the contribution of National Forest System lands to the ecological sustainability of all lands within the area of analysis.

(i) *Evaluation of ecosystem diversity.* Evaluations of ecosystem diversity must include, as appropriate, the following:

(A) Information about focal species that provide insights to the integrity of the larger ecological system to which they belong.

(B) A description of the biological and physical properties of the ecosystem using the characteristics identified in paragraph (a)(1)(i) of this section.

(C) A description of the principal ecological processes occurring at the spatial and temporal scales that influence the characteristic structure and composition of ecosystems in the assessment or analysis area. These descriptions must include the distribution, intensity, frequency, and magnitude of natural disturbance regimes of the current climatic period, and should include other ecological processes important to ecological sustainability, such as nutrient cycling, migration, dispersal, food web dynamics, water flows, and the identification of the risks to maintaining these processes. These descriptions may also include an evaluation of the feasibility of maintaining natural ecological processes as a tool to contribute to ecological sustainability.

(D) A description of the effects of human activities on ecosystem diversity. These descriptions must distinguish activities that had an integral role in the landscape's ecosystem diversity for a long period of time from activities that are of a type, size, or rate that were not typical of disturbances under which native plant and animal species and ecosystems developed.

(E) An estimation of the range of variability of the characteristics of ecosystem diversity, identified in paragraph (a)(l)(i) of this section, that would be expected under the natural disturbance regimes of the current climatic period. The current values of these characteristics should be compared to the expected range of variability to develop insights about the current status of ecosystem diversity.

(F) An evaluation of the effects of air quality on ecological systems including water.

(G) An estimation of current and foreseeable future Forest Service consumptive and non-consumptive water uses and the quantity and quality of water needed to support those uses and contribute to ecological sustainability.

(H) An identification of reference landscapes to provide for evaluation of the effects of actions.

(ii) *Evaluations of species diversity.* Evaluations of species diversity must include, as appropriate, assessments of the risks to species viability and the identification of ecological conditions needed to maintain species viability over time based on the following:

(A) The viability of each species listed under the Endangered Species Act as threatened, endangered, candidate, and proposed species must be assessed. Individual species assessments must be used for these species.

(B) For all other species, including other species-at-risk and those species for which there is little information, a variety of approaches may be used, including individual species assessments and assessments of focal species or other indicators used as surrogates in the evaluation of ecological conditions needed to maintain species viability.

(C) Except as provided in paragraph (a)(2)(ii)(A) of this section, for species groups that contain many species, assessments of functional, taxonomic, or habitat groups rather than individual species may be appropriate.

(D) In analyzing viability, the extent of information available about species, their habitats, the dynamic nature of ecosystems and the ecological conditions needed to support them must be identified. Species assessments may rely on general conservation principles and expert opinion. When detailed information on species habitat relationships, demographics, genetics, and risk factors is available, that information should be considered.

(b) *Plan decisions.* When making plan decisions that will affect ecological sustainability, the responsible official must use the information developed under paragraph (a) of this section. The following requirements must apply at the spatial and temporal scales that the responsible official determines to be appropriate to the plan decision:

(1) *Ecosystem diversity.* Plan decisions affecting ecosystem diversity must provide for maintenance or restoration of the characteristics of ecosystem composition and structure within the range of variability that would be expected to occur under natural disturbance regimes of the current climatic period in accordance with paragraphs (b)(1)(i) through (v) of this section.

(i) Except as provided in paragraph (b)(1)(iv) of this section, in situations where ecosystem composition and structure are currently within the expected range of variability, plan decisions must maintain the composition and structure within the range.

(ii) Except as provided in paragraph (b)(1)(v) of this section, where current ecosystem composition and structure are outside the expected range of variability, plan decisions must provide for measurable progress toward ecological conditions within the expected range of variability.

(iii) Where the range of variability cannot be practicably defined, plan decisions must provide for measurable progress toward maintaining or restoring ecosystem diversity. The responsible official must use independently peer-reviewed scientific methods other than the expected range of variability to maintain or restore ecosystem diversity. The scientific basis for such alternative methods must be documented in accordance with (§§ 219.22 through 219.25).

(iv) Where the responsible official determines that ecological conditions are within the expected range of variability and that maintaining ecosystem composition and structure within that range is ecologically, socially or economically unacceptable, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. In such circumstances, the responsible official must use independently peer-reviewed scientific methods other than the expected range of variability to provide for the maintenance or restoration of ecosystem diversity. The scientific basis for such alternative methods must be documented in accordance with (§§ 219.22 through 219.25).

(v) Where the responsible official determines that ecological conditions are outside the expected range of variability and that it is not practicable to make measurable progress toward conditions within the expected range of variability, or that restoration would result in conditions that are ecologically, socially or economically unacceptable, plan decisions may provide for ecosystem composition and structure outside the expected range of variability. In such circumstances, the responsible official must use independently peer-reviewed scientific methods other than the expected range of variability to provide for the maintenance or restoration of ecosystem diversity. The scientific basis for such alternative methods must be documented (§§ 219.22 through 219.25).

(2) *Species diversity.* (i) Plan decisions affecting species diversity must provide for ecological conditions that the responsible official determines provide a high likelihood that those conditions are capable of supporting over time the viability of native and desired non-native species well distributed throughout their ranges within the plan area, except as provided in paragraphs (b)(2)(ii) through (iv) of this section. Methods described in paragraph (a)(2)(ii) of this section may be used to make the determinations of ecological conditions needed to maintain viability. A species is well distributed when individuals can interact with each other in the portion of the species range that occurs within the plan area. When a plan area occupies the entire range of a species, these decisions must provide for ecological conditions capable of supporting viability of the species and its component populations throughout that range. When a plan area encompasses one or more naturally disjunct and self-sustaining populations of a species, these decisions must provide ecological conditions capable of supporting over time viability of each population. When a plan area encompasses only a part of a population, these decisions must provide ecological conditions capable of supporting viability of that population well distributed throughout its range within the plan area.

(ii) When conditions outside the authority of the agency prevent the agency from providing ecological conditions that provide a high likelihood of supporting over time the viability of native and desired non-native species well distributed throughout their ranges within the plan area, plan decisions must provide for ecological conditions well distributed throughout the species range within the plan area to contribute to viability of that species.

(iii) Where species are inherently rare or not naturally well distributed in the plan area, plan decisions should not contribute to the extirpation of the species from the plan area and must provide for ecological conditions to maintain these species considering their natural distribution and abundance.

(iv) Where environmental conditions needed to support a species have been so degraded that it is technically infeasible to restore ecological conditions that would provide a high likelihood of supporting viability, plan decisions must provide for ecological conditions to contribute to supporting over time viability to the degree practicable.

(3) *Federally listed threatened and endangered species.* (i) Plan decisions must provide for implementing actions in conservation agreements with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service that provide a basis for not needing to list a species. In some situations, conditions or events beyond the control or authority of the agency may limit the Forest Service's ability to prevent the need for federal listing. Plan decisions should reflect the unique opportunities

that National Forest System lands provide to contribute to recovery of listed species.

(ii) Plan decisions involving species listed under the Endangered Species Act must include, at the scale determined by the responsible official to be appropriate to the plan decision, reasonable and prudent measures and associated terms and conditions contained in final biological opinions issued under 50 CFR part 402. The plan decision documents must provide a rationale for adoption or rejection of discretionary conservation recommendations contained in final biological opinions.

§ 219.21 Social and economic sustainability.

To contribute to economic and social sustainability, the responsible official involves interested and affected people in planning for National Forest System lands (§§ 219.12 through 219.18), provides for the development and consideration of relevant social and economic information and analyses, and a range of uses, values, products, and services.

(a) *Social and economic information and analyses.* To understand the contribution national forests and grasslands make to the economic and social sustainability of local communities, regions, and the nation, the planning process must include the analysis of economic and social information at variable scales, including national, regional, and local scales. Social analyses address human life-styles, cultures, attitudes, beliefs, values, demographics, and land-use patterns, and the capacity of human communities to adapt to changing conditions. Economic analyses address economic trends, the effect of national forest and grassland management on the well-being of communities and regions, and the net benefit of uses, values, products, or services provided by national forests and grasslands. Social and economic analyses should recognize that the uses, values, products, and services from national forests and grasslands change with time and the capacity of communities to accommodate shifts in land uses change. Social and economic analyses may rely on quantitative, qualitative, and participatory methods for gathering and analyzing data. Social and economic information may be developed and analyzed through broad-scale assessments and local analyses (§ 219.5), monitoring results (§ 219.11), or other means. For plan revisions, and to the extent the responsible official considers to be appropriate for plan amendments or site-specific decisions, the responsible official must develop or supplement the information and analyses related to the following:

(1) Describe and analyze, as appropriate, the following:

(i) Demographic trends; life-style preferences; public values; land-use patterns; related conservation and land use policies at the state and local level; cultural and American Indian tribe and Alaska Native land settlement patterns; social and cultural history; social and cultural opportunities provided by national forest system lands; the organization and leadership of local communities; community assistance needs; community health; and other appropriate social and cultural information;

(ii) Employment, income, and other economic trends; the range and estimated long-term value of market and non-market goods, uses, services, and amenities that can be provided by national forest system lands consistent with the requirements of ecological sustainability, the estimated cost of providing them, and the estimated effect of providing them on regional and community well-being, employment, and wages; and other appropriate economic information. Special attention should be paid to the uses, values, products, or services that the Forest Service is uniquely poised to provide;

(iii) Opportunities to provide social and economic benefits to communities through natural resource restoration strategies;

(iv) Other social or economic information, if appropriate, to address issues being considered by the responsible official (§ 219.4).

(2) Analyze community or region risk and vulnerability. Risk and vulnerability analyses assess the vulnerability of communities from changes in ecological systems as a result of natural succession or potential management actions. Risk may be considered for geographic, relevant occupational, or other related communities of interest. Resiliency and community capacity should be considered in a risk and vulnerability analysis. Risk and vulnerability analysis may also address potential consequences to communities and regions from land management changes in terms of capital availability, employment opportunities, wage levels, local tax bases, federal revenue sharing, the ability to support public infrastructure and social services, human health and safety, and other factors as necessary and appropriate.

(b) *Plan decisions.* When making plan decisions that will affect social or economic sustainability, the responsible official must use the information analyses developed in paragraph (a) of this section. Plan decisions contribute to social and economic sustainability by providing for a range of uses, values, products, and services, consistent with ecological sustainability.

The Contribution of Science

§ 219.22 The overall role of science in planning.

(a) The responsible official must ensure that the best available science is considered in planning. The responsible official, when appropriate, should acknowledge incomplete or unavailable information, scientific uncertainty, and the variability inherent in complex systems.

(b) When appropriate and practicable and consistent with applicable law, the responsible official should provide for independent, scientific peer reviews of the use of science in planning. Independent, scientific peer reviews are conducted using generally accepted scientific practices that do not allow individuals to participate in the peer reviews of documents they authored or co-authored.

§ 219.23 The role of science in assessments, analyses, and monitoring.

(a) *Broad-scale assessments.* If the Forest Service is leading a broad-scale assessment, the assessment must be led by a Chief Scientist selected by the Deputy Chief of Research and Development. When appropriate and practicable, a responsible official may provide for independent, scientific peer review of the findings and conclusions originating from a broad-scale assessment. Independent, scientific peer review may be provided by scientists from the Forest Service, other federal, state, or tribal agencies, or other institutions.

(b) *Local analyses.* Though not required, a responsible official may include scientists in the development or technical reviews of local analyses and field reviews of the design and selection of subsequent site-specific actions.

(c) *Monitoring.* (1) The responsible official must include scientists in the design and evaluation of monitoring strategies. Additionally, the responsible official must provide for an independent, scientific peer review of plan monitoring on at least a biennial basis to validate adherence to appropriate protocols and methods in collecting and processing of monitoring samples and to validate that data are summarized and interpreted properly.

(2) When appropriate and practicable, the responsible official should include scientists in the review of monitoring

data and analytical results to determine trends relative to ecological, economic, or social sustainability.

§ 219.24 Science consistency evaluations.

(a) The responsible official must ensure that plan amendments and revisions are consistent with the best available science. The responsible official may use a science advisory board (§ 219.25) to assist in determining whether information gathered, evaluations conducted, or analyses and conclusions reached in the planning process are consistent with the best available science. If the responsible official decides to use a science advisory board, the board and the responsible official are to jointly establish criteria for the science advisory board and the responsible official to use in reviewing the consistency of proposed plan amendments and revisions with the best available science.

(b) The science advisory board is responsible for organizing and conducting a scientific consistency evaluation to determine the following:

(1) If relevant scientific (ecological, social, or economic) information has been considered by the responsible official in a manner consistent with current scientific understanding at the appropriate scales;

(2) If uncertainty of knowledge has been recognized, acknowledged, and adequately documented; and

(3) If the level of risk in achievement of sustainability is acknowledged and adequately documented by the responsible official.

(c) If substantial disagreement among members of the science advisory board or between the science advisory board and the responsible official is identified during a science consistency evaluation, a summary of such disagreement should be noted in the appropriate environmental documentation within Forest Service NEPA procedures.

§ 219.25 Science advisory boards.

(a) *National science advisory board.* The Forest Service Deputy Chief for Research and Development must establish, convene, and chair a science advisory board to provide scientific advice on issues identified by the Chief of the Forest Service. Board membership must represent a broad range of scientific disciplines including, but not limited to, the physical, biological, economic, and social sciences.

(b) *Regional science advisory boards.* Based upon needs identified by Regional Forester(s) or Research Station Director(s), the Forest Service Research Station Director(s), should establish and convene science advisory boards consistent with the Federal Advisory Committee Act (5 U.S.C. app.) to provide advice to one or more Regional Foresters regarding the application of science in planning and decisionmaking for National Forest System lands. At least one regional science advisory board must be available for each national forest and grassland. The Station Director(s) must chair the board or appoint a chair of such boards. The geographical boundaries of the boards need not align with National Forest System Regional boundaries. Board membership must represent a broad range of science disciplines including, but not limited to, the physical, biological, economic, and social sciences. Regional science advisory board tasks may include, but are not limited, to:

(1) Evaluating significance and relevance of new information related to current plan decisions, including the results of monitoring and evaluation; and

(2) Evaluating science consistency as described in § 219.24.

(c) *Work groups.* With the concurrence of the appropriate chair and subject to available funding, the national or regional science advisory boards may convene work groups to study issues and provide recommendations.

Special Considerations

§ 219.26 Identifying and designating suitable uses.

National forests and grasslands are suitable for a wide variety of public uses, such as outdoor recreation, livestock grazing, timber harvest, off-road vehicle travel, or other uses except where lands are determined to be unsuited for a particular use. Lands are not suited for a particular use if that use: is prohibited by law, regulation, or Executive Order; is incompatible with the mission or policies of the National Forest System; or would result in substantial and permanent impairment of the productivity of the land. Through a plan amendment or revision, the responsible official may determine whether specific uses may begin, continue, or terminate within the plan area. Planning documents should describe or display lands suitable for various uses in areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions.

§ 219.27 Special designations.

The Forest Service may recommend special designations to higher authorities or, to the extent permitted by law, adopt special designations through plan amendment or revision. Special designations are areas within the National Forest System that are identified for their unique or special characteristics and include the following:

(a) *Congressionally designated areas.* Congressionally designated areas may include, but are not limited to, wilderness, wild and scenic rivers, national trails, scenic areas, recreation areas, and monuments. These nationally significant areas must be managed as required by Congress and may have specific requirements for their management.

(b) *Wilderness area reviews.* Unless federal statute directs otherwise, all undeveloped areas that are of sufficient size as to make practicable their preservation and use in an unimpaired condition must be evaluated for recommended wilderness designation during the plan revision process. These areas may be evaluated at other times as determined by the responsible official.

(c) *Administratively designated areas.* Administratively designated areas may include, but are not limited to, critical watersheds, research natural areas, national monuments, geological areas, inventoried roadless areas, unroaded areas, motorized and non-motorized recreation areas, botanical areas, and scenic byways.

§ 219.28 Determination of land suitable for timber harvest.

(a) *Lands where timber may not be harvested.* The plan must identify lands within the plan area where timber may not be harvested. These lands include:

(1) Lands where timber harvest would violate statute, Executive Order, or regulation and those lands that have been withdrawn from timber harvest by the Secretary of Agriculture or the Chief of the Forest Service;

(2) Lands where technology is not available for conducting timber harvesting without causing irreversible damage to soil, slope, or other watershed conditions or produce substantial and permanent impairment of the productivity of the land; and

(3) Lands where there are no assurances that such lands can be adequately restocked within 5 years after harvest;

(b) *Lands where timber may be harvested for timber production.* The responsible official may establish timber production as a multiple-use plan objective for lands not identified in paragraph (a) of this section if the costs of timber production are justified by the ecological, social, or economic benefits considering physical, economic, and other pertinent factors to the extent

feasible. Lands where timber production is not established as a plan objective are deemed not suited for timber production. These lands must be reviewed by the responsible official at least once every 10 years, or as prescribed by law, to determine their suitability for timber production considering physical, economic, and other pertinent factors to the extent feasible. Based on this review, timber production may be established as a plan objective for these lands through amendment or revision of the plan.

(c) *Lands where timber may be harvested for other multiple-use values.* Except for lands identified in paragraph (a) of this section, timber may be harvested from land where timber production is not established as a plan objective if, based on a site-specific analysis, the responsible official determines and documents that such timber harvest would contribute to achievement of desired conditions and ecological sustainability, and is necessary to protect multiple-use values other than timber production.

§ 219.29 Limitation on timber harvest.

(a) *Estimate of the limitation of timber harvest.* The responsible official must estimate the amount of timber that can be sold annually in perpetuity on a sustained-yield basis from National Forest System lands other than those identified in § 219.28(a). This estimate must be based on the yield of timber that can be removed consistent with achievement of objectives or desired conditions in the applicable plan. In those cases where a national forest has less than 200,000 acres of forested land identified in lands other than those in § 219.28(a), two or more national forests may be combined for the purpose of estimating amount of timber that can be sold annually on a sustained-yield basis. Estimations for lands where timber production is established as a plan objective § 219.28(b) and estimations for lands identified in § 219.28(c) cannot be combined.

(b) *Limitation of timber harvest.* The responsible official must limit the sale of timber from the lands where timber production is an objective and from other lands to a quantity equal to or less than that estimated in paragraph (a) of this section.

(c) *Exceptions to limitations of timber harvest.* For purposes of limiting the sale of timber, the responsible official may sell timber from areas that are substantially affected by fire, wind, or other events, or for which there is an imminent threat from insects or disease, and may either substitute such timber for timber that would otherwise be sold or, if not feasible, sell such timber over and above the plan limit established in paragraph (b) of this section. If departure from the quantity of timber removal established in paragraph (b) of this section is necessary to meet overall multiple-use objectives, the requirements in 16 U.S.C. 1611 must be followed.

Planning Documentation

§ 219.30 Plan documentation.

A plan is a repository of documents that integrates and displays the desired conditions, objectives, standards, and other plan decisions that apply to a unit of the National Forest System. The plan also contains maps, monitoring and evaluation results, the annual monitoring and evaluation report, and other information relevant to how the plan area is to be managed. Planning documents should be clear, understandable, and readily available for public review. Plan documents should be updated through amendments, revision, and routine maintenance (§ 219.31). Plan documents include, at a minimum, the following:

(a) *A summary of the plan.* The summary is a concise description of the plan that includes a summary of the plan decisions and a description of the plan area and appropriate planning units. The summary should include a brief description of the ecological, social, and economic environments within the plan area and the overall strategy for maintenance or restoration of sustainability, including desired conditions and objectives for their achievement. The summary also includes appropriate maps, a description of the transportation system, utility corridors, land ownership patterns and proposed land ownership adjustments, charts, figures, photographs, and other information to enhance understanding.

(b) *Display of public uses.* The plan documents must identify the suitability of the plan area for various uses (§ 219.26) such as recreation uses, livestock grazing, timber harvest, and mineral developments. The plan documents must identify land where timber may not be harvested and where timber production is an objective (§ 219.28). The plan documents also must describe the limitations on the removal of timber (§ 219.29) and the standards for timber harvest and regeneration methods (§ 219.7(c)).

(c) *Plan decisions.* The plan documents must display or describe the plan decisions (§ 219.7).

(d) *Display of actions and outcomes.* The plan documents must also contain:

(1) An annually updated list or other display of proposed, authorized, and completed actions to achieve desired conditions and objectives within the plan area;

(2) A 2-year schedule, updated annually, of anticipated outcomes which may include anticipated uses, values, products, or services based on an estimate of Forest Service budget and capacity to perform the identified program of work. The estimate of Forest Service budget and capacity should be based on recent funding levels;

(3) A 2-year summary, updated annually, of the actual outcomes which may include specific uses, values, products, or services provided as a result of completed site-specific actions;

(4) A projected range of outcomes which may include anticipated uses, values, products, and services for the next 15 years, assuming current or likely budgets while considering other spending levels as appropriate. These projections are estimates and as such often contain a high degree of uncertainty; they are intended to describe expected progress in achieving desired conditions and objectives within the plan area. The projections are to be updated during revision of each plan;

(5) A description of the monitoring strategy to occur in the plan area and the annual monitoring and evaluation report; and

(6) A summary of the projected program of work, updated annually, including costs for inventories, assessments, proposed and authorized actions, and monitoring. The projected program of work must be based on reasonably anticipated funding levels. Reasonably anticipated funding levels should be based on recent funding levels. The plan documents must also include a description of the total current-year budget, funded actions, projections for future budgets over the next 2 years; and a display of the budget trends over at least the past 5 years.

(e) *Other components.* A plan must contain or reference a list of materials, Forest Service policies, and decisions used in forming plan decisions. The information should include, but is not limited to, lists of previous decision and environmental documents, assessments, conservation agreements and strategies, biological opinions, inventories, administrative studies, monitoring results, and research relevant to adoption of plan decisions.

§ 219.31 Maintenance of the plan and planning records.

(a) Each National Forest or Grassland Supervisor must maintain a complete

set of the planning documents required under § 219.30 that constitute the plan for the unit. The set of documents must be readily available to the public using appropriate and relevant technology.

(b) The following administrative corrections and additions may be made at any time, are not plan amendments or revisions, and do not require public notice or the preparation of an environmental document under Forest Service NEPA procedures:

(1) Corrections and updates of data and maps;

(2) Updates to activity lists and schedules as required by § 219.30(d)(1) through (6);

(3) Corrections of typographical errors or other non-substantive changes; and

(4) Changes in monitoring methods other than those required in a monitoring strategy (§ 219.11(c)).

Objections and Appeals

§ 219.32 Objections to plan amendments or plan revisions.

(a) Any person may object to a proposed amendment or revision prepared under the provisions of this subpart, except for an amendment or revision proposed by the Chief. The objection must be filed within 30 calendar days from the date that the Environmental Protection Agency publishes the notice of availability of a final environmental impact statement regarding a proposed amendment or revision in the **Federal Register,** or within 30 calendar days of the publication of a public notice of a proposed amendment not requiring preparation of an environmental impact statement. Within 10 days after the close of the objection period, the Responsible Official shall publish notice of all objections in the local newspaper of record. An objection must be filed with the reviewing officer identified in the notice and contain:

(1) The name, mailing address, and telephone number of the person filing the objection;

(2) A specific statement of the basis for each objection; and

(3) A description of the objector's participation in the planning process for the proposed amendment or revision, including a copy of any relevant documents submitted during the planning process.

(b) Objectors may request meetings with the reviewing officer and the responsible official to discuss the objection, to narrow the issues, agree on facts, and explore opportunities for resolution. The reviewing officer must allow other interested persons to participate in such meetings. An interested person must file a request to participate in an objection within ten days after publication of the notice of objection as described in paragraph (a) of this section.

(c) The reviewing officer must respond, in writing, to an objection within a reasonable period of time and may respond to all objections in one response. The reviewing officer's response regarding an objection is the final decision of the Department of Agriculture.

(d) The responsible official may not approve a proposed amendment or revision until the reviewing officer has responded to all objections. A decision by the responsible official approving an amendment or revision must be consistent with the reviewing officer's response to objections to the proposed amendment or revision.

(e) Where the Forest Service is a participant in a multi-agency decision subject to objection under this subpart, the responsible official and reviewing officer may waive the objection procedures of this subpart to adopt the administrative review procedure of another participating federal agency, if the responsible official and the responsible official of the other agencies agree to provide a joint response to those who have filed for administrative review of the multi-agency decision.

(f) The information collection requirements of this section have been approved by the Office of Management and Budget and assigned control number 0596–0158.

§ 219.33 Appeals of site-specific decisions.

If a site-specific decision is proposed in conjunction with a plan amendment or revision, a person may object to the proposed plan amendment or revision as described in (§ 219.32). If a decision is made to authorize a site-specific action, a person may request administrative review of that decision as described in 36 CFR part 215.

Applicability and Transition

§ 219.34 Applicability.

The provisions of this subpart are applicable to all units of the National Forest System as defined by 16 U.S.C. 1609.

§ 219.35 Transition.

(a) The transition period begins on November 9, 2000, and ends upon the completion of the revision process (§ 219.9) for each unit of the National Forest System. During the transition period, the responsible official must consider the best available science in implementing and, if appropriate, amending the plan.

(b) Until the Department promulgates superseding planning regulations pursuant to the National Forest Management Act, a responsible official may elect to continue or to initiate new plan amendments or revisions under the 1982 planning regulations in effect prior to November 9, 2000 (See 36 CFR parts 200 to 299, Revised as of July 1, 2000), or the responsible official may conduct the amendment or revision process in conformance with the provisions of this subpart.

(c) If a review of lands not suited for timber production is required before the completion of the revision process, the review must take place as described by the provisions of § 219.28, except as provided in paragraph (b) of this section.

(d) The date by which site-specific decisions made by the responsible official must be in conformance with the provisions of this subpart is extended from November 9, 2003, until the Department promulgates superseding planning regulations pursuant to the National Forest Management Act.

(e) Within 1 year of November 9, 2000, the Regional Forester must withdraw the regional guide. When a regional guide is withdrawn, the Regional Forester must identify the decisions in the regional guide that are to be transferred to a regional supplement of the Forest Service directive system (36 CFR 200.4) or to one or more plans and give notice in the **Federal Register** of these actions. The transfer of direction from a regional guide to a regional supplement of the Forest Service directive system or to one or more plans does not constitute an amendment, revision, or site-specific action subject to Forest Service NEPA procedures.

(f) Within 3 years after completion of the revision process for a unit, the responsible official must complete the first monitoring and evaluation report as required in § 219.11(f).

(g) Within 1 year of November 9, 2000, the Chief of the Forest Service must establish a schedule for completion of the revision process for each unit of the National Forest System.

Appendix A to § 219.35

Interpretive Rule Related to § 219.35(b)

The Department is making explicit its preexisting understanding of § 219.35(b) with regard to the appeal or objection procedures that may be applied to amendments or revisions of land and resource management plans during the transition from the appeal procedures in

effect prior to November 9, 2000, to the objection procedures of § 219.32 as follows:

1. During the transition period, the option to proceed under the 1982 regulations or under the provisions of this subpart specifically includes the option to select either the objection procedures of this subpart or the optional appeal procedures published at 54 FR 3357 (January 23, 1989), as amended at 54 FR 13807 (April 5, 1989); 54 FR 34509 (August 21, 1989); 55 FR 7895 (March 6, 1990); 56 FR 4918 (February 6, 1991); 56 FR 46550 (September 13, 1991); and 58 FR 58915 (November 4, 1993).

Appendix B to § 219.35

Interpretative Rule Related to § 219.35(a) and (b)

The Department is clarifying the intent of the transition provisions of paragraphs (a) and (b) of § 219.35 with regard to the consideration and use of the best available science to inform project decisionmaking that implements a land management plan as follows:

1. Under the transition provisions of paragraph (a), the responsible official must consider the best available science in implementing and, if appropriate, in amending existing plans. Paragraph (b) allows the responsible official to elect to prepare plan amendments and revisions using the provisions of the 1982 planning regulation until a new final planning rule is adopted.

2. Until a new final rule is promulgated, the transition provisions of § 219.35 remain in effect. The 1982 rule is not in effect. During the transition period, responsible officials may use the provisions of the 1982 rule to prepare plan amendments and revisions. Projects implementing land management plans must comply with the transition provisions of § 219.35, but not any other provisions of the 2000 planning rule. Projects implementing land management plans and plan amendments, as appropriate, must be developed considering the best available science in accordance with § 219.35(a). Projects implementing land management plans must be consistent with the provisions of the governing plan.

Definitions

§ 219.36 Definitions.

Definitions of the special terms used in this subpart are set out in alphabetical order in this section as follows:

Adaptive management: An approach to natural resource management wherein the effects of policies, plans, and actions are monitored for the purpose of learning and adjusting future management actions. Successive iteration of the adaptive process is essential in contributing to sustainability.

Assessment or analysis area: The geographic area included within the scope of a broad-scale assessment or local analysis.

Candidate species: Species identified by the United States Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), which are considered to be candidates for listing under the Endangered Species Act as published in the **Federal Register.**

Conservation agreement: A formal agreement between the Forest Service and the USFWS and/or NMFS identifying management actions necessary to prevent the need to list species under the Endangered Species Act.

Current climatic period: The period of time since establishment of the modern major vegetation types, which typically encompass the late Holocene Epoch including the present, including likely climatic conditions within the planning period. The climatic period is typically centuries to millennia in length, a period of time that is long enough to encompass the variability that species and ecosystems have experienced.

Desired condition: A statement describing a common vision for a specific area of land or type of land within the plan area. Statements of desired conditions should include the estimated time required for their achievement.

Desired non-native species: Those species of plants or animals which are not indigenous to an area but valued for their contribution to species diversity or their high social, cultural or economic value.

Disturbance regime: Actions, functions, or events that influence or maintain the structure, composition, or function of terrestrial or aquatic ecosystems. Natural disturbances include, among others, drought, floods, wind, fires, insects, and pathogens. Human-caused disturbances include actions such as recreational use, livestock grazing, mining, road construction, timber harvest, and the introduction of exotic species.

Diversity of plant and animal communities: The distribution and relative abundance of plant and animal communities and their component species occurring within an area.

Ecological conditions: Components of the biological and physical environment that can affect the diversity of plant and animal communities, including species viability, and the productive capacity of ecological systems. These could include the abundance and distribution of aquatic and terrestrial habitats, roads and other structural developments, human uses, and invasive and exotic species.

Ecological sustainability: The maintenance or restoration of the composition, structure, and processes of ecosystems including the diversity of plant and animal communities and the productive capacity of ecological systems.

Ecosystem composition: The plant and animal species and communities in the plan area.

Ecosystem processes: Ecological functions such as photosynthesis, energy flow, nutrient cycling, water movement, disturbance, and succession.

Ecosystem structure: The biological and physical attributes that characterize ecological systems.

Focal species: Focal species are surrogate measures used in the evaluation of ecological sustainability, including species and ecosystem diversity. The key characteristic of a focal species is that its status and trend provide insights to the integrity of the larger ecological system to which it belongs. Individual species, or groups of species that use habitat in similar ways or which perform similar ecological functions, may be identified as focal species. Focal species serve an umbrella function in terms of encompassing habitats needed for many other species, play a key role in maintaining community structure or processes, are sensitive to the changes likely to occur in the area, or otherwise serve as an indicator of ecological sustainability. Certain focal species may be used as surrogates to represent ecological conditions that provide for viability of some other species, rather than directly representing the population dynamics of those other species.

Forest Service NEPA procedures: The Forest Service policy and procedures for implementing the National Environmental Policy Act (NEPA) and the Council on Environmental Quality regulations (40 CFR chapter V) as described in Chapter 1950 of the Forest Service Manual and Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook (See 36 CFR 200.4 for availability).

Inherently rare species: A species is inherently rare if it occurs in only a limited number of locations, has low population numbers, or has both limited occurrences and low population numbers, and those conditions are natural characteristics of the life history and ecology of the species and not

primarily the result of human disturbance.

Inventoried roadless areas: Areas are identified in a set of inventoried roadless area maps, contained in Forest Service Roadless Area Conservation, Draft Environmental Impact Statement, Volume 2, dated May 2000, which are held at the National headquarters office of the Forest Service, or any subsequent update or revision of those maps.

Major vegetation types: Plant communities, which are typically named after dominant plant species that are characteristic of the macroclimate and geology of the region or sub-region.

Native species: Species of the plant and animal kingdom indigenous to the plan area or assessment area.

Plan area: The geographic area of National Forest System lands covered by an individual land and resource management plan. The area may include one or more administrative units.

Productive capacity of ecological systems: The ability of an ecosystem to maintain primary productivity including its ability to sustain desirable conditions such as clean water, fertile soil, riparian habitat, and the diversity of plant and animal species; to sustain desirable human uses; and to renew itself following disturbance.

Range of variability: The expected range of variation in ecosystem composition, and structure that would be expected under natural disturbance regimes in the current climatic period. These regimes include the type, frequency, severity, and magnitude of disturbance in the absence of fire suppression and extensive commodity extraction.

Reference landscapes: Places identified in the plan area where the conditions and trends of ecosystem composition, structure, and processes are deemed useful for setting objectives for desired conditions and for judging the effectiveness of plan decisions.

Responsible official: The officer with the authority and responsibility to oversee the planning process and make decisions on proposed actions.

Reviewing officer: The supervisor of the responsible official.

Social and economic sustainability: Meeting the economic, social, aesthetic, and cultural needs and desires of current generations without reducing the capacity of the environment to provide for the needs and desires of future generations, considering both local communities and the nation as a whole. It also involves the capacity of citizens to communicate effectively with each other and to make sound choices about their environment.

Species: Any member of the animal or plant kingdom that is described as a species in a peer-reviewed scientific publication and is identified as a species by the responsible official pursuant to a plan decision, and must include all species listed under the Endangered Species Act as threatened, endangered, candidate, or proposed for listing by the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

Species-at-risk: Federally listed endangered, threatened, candidate, and proposed species and other species for which loss of viability, including reduction in distribution or abundance, is a concern within the plan area. Other species-at-risk may include sensitive species and state listed species. A species-at-risk also may be selected as a focal species.

Species viability: A species consisting of self-sustaining and interacting populations that are well distributed through the species' range. Self-sustaining populations are those that are sufficiently abundant and have sufficient diversity to display the array of life history strategies and forms to provide for their long-term persistence and adaptability over time.

Successional stages: The different structural and compositional phases of vegetation development of forests and grasslands that occur over time following disturbances that kill, remove, or reduce vegetation and include the major developmental or seral stages that occur within a particular environment.

Timber production: The sustained long-term and periodic harvest of wood fiber from National Forest System lands undertaken in support of social and economic objectives identified in one or more land and resource management plans. For purposes of this regulation, the term timber production includes fuel wood.

Undeveloped areas: Areas, including but not limited to inventoried roadless areas and unroaded areas, within national forests or grasslands that are of sufficient size and generally untrammeled by human activities such that they are appropriate for consideration for wilderness designation in the planning process.

Unroaded areas: Any area, without the presence of a classified road, of a size and configuration sufficient to protect the inherent characteristics associated with its roadless condition. Unroaded areas do not overlap with inventoried roadless areas.

Subpart B—[Reserved]

Dated: December 8, 2009.

Harris D. Sherman,

Under Secretary, NRE.

[FR Doc. E9–30171 Filed 12–17–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900–AN44

Federal Tort Claim Delegation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations concerning delegation of authority to the Secretary of Veterans Affairs to consider, ascertain, adjust, determine, compromise, and settle claims under the Federal Tort Claims Act where the amount of settlement does not exceed $300,000, and the Secretary's redelegation of such authority to certain personnel within the Office of the General Counsel. The amendments will facilitate the timely processing of claims under the Federal Tort Claims Act by expanding VA's settlement authority and clarifying the delegation of such authority within the Department.

DATES: *Effective Date:* December 18, 2009.

FOR FURTHER INFORMATION CONTACT: E. Douglas Bradshaw, Jr., Assistant General Counsel (021), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–4900. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 203 of the Veterans Benefits and Services Act of 1988 (Pub. L. 100–322) added former section 223 to title 38, United States Code (recodified in 1991 as 38 U.S.C. 515), permitting the Secretary of Veterans Affairs to settle tort claims not exceeding an amount to be delegated by the Attorney General of the United States (with the delegation not to exceed the maximum delegated to the United States Attorneys). In 1988, the Attorney General delegated $100,000 in settlement authority to the Secretary. 53 FR 37753, Sept. 28, 1988. In 1999, VA published a final rule reflecting that the Attorney General increased the delegation to $200,000. 64 FR 47111, Aug. 30, 1999. In 2008, the Attorney General increased the delegation of settlement authority to $300,000. 73 FR 70278, Nov. 20, 2008.

Current § 14.600 does not reflect the Attorney General's 2008 delegation or VA's determination regarding the necessary redelegations to Office of the General Counsel (OGC) personnel. The purpose of this rulemaking is to update VA regulations in light of the Attorney General's action increasing the amount of VA's settlement authority for tort claims and also to allow for the further delegation of this authority within OGC as necessary.

This amendment to 38 CFR 14.600(c)(2) delegates to the General Counsel, Deputy General Counsel, Assistant General Counsel (Professional Staff Group I), or those authorized to act for them, authority to consider, ascertain, adjust, determine, compromise, and settle a claim arising under the Federal Tort Claims Act; provided that any award, compromise, or settlement in excess of $300,000 shall be effected only with the prior written approval of the Attorney General or his or her designee. The amendment also provides for the execution of a memorandum explaining the basis for settlement of a claim in excess of $100,000 to be sent to the Department of Justice (DOJ), as required by the Attorney General's delegation to the Secretary.

Authority is also delegated to the Regional Counsels, or those authorized to act for them, and to the Deputy Assistant General Counsel (Professional Staff Group I) to consider, ascertain, adjust, determine, compromise, and settle any claim under the Federal Tort Claims Act; provided that any award, compromise, or settlement does not exceed $150,000; and provided, further, that whenever a settlement is effected in an amount in excess of $100,000, a memorandum fully explaining the basis for the action taken shall be sent to the DOJ, as required by the Attorney General's delegation to the Secretary.

This rule further amends § 14.600 to incorporate notes (1), (2), and (3) into the regulation text. We have determined that the notes, which prescribe the requirement for notifying DOJ of the basis for any settlement of a tort action under VA's delegated authority, are more appropriate for regulation text. Accordingly, we have amended § 14.600(c) and (d) to incorporate the DOJ notification requirement and delete the notes.

Administrative Procedure Act

This final rule concerns agency organization, management, procedure, or practice, specifically delegation of authority to employees of the Department to perform certain acts or render decisions. Accordingly, because this amendment merely reflects a delegation change and makes other non-substantive changes, this rule is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Executive Order 12866

Because this document is limited to agency organization and management, it is not within the definition of ''regulation'' in section 3(d) of Executive Order 12866 and therefore not subject to that Executive Order's requirements for regulatory actions.

Regulatory Flexibility Act

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule will not affect any small entities. Only VA employees could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, codified at 2 U.S.C. 1532, requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans, and General Counsel.

Approved: December 10, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 14 as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 1. Revise the authority citation for part 14 to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Amend § 14.600 by:

■ a. Revising paragraphs (c)(2), (c)(3), and (d)(2);

■ b. Removing notes (1), (2), and (3).

The revision reads as follows:

§ 14.600 Federal Tort Claims Act—general.

* * * * *

(c) * * *

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) or those authorized to act for them with respect to any claim; provided that any award, compromise, or settlement in excess of $300,000 shall be effected only with the prior written approval of the Attorney General or his or her designee; provided further that whenever a settlement is effected in an amount in excess of $100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(3) To the Regional Counsels and the Deputy Assistant General Counsel (Professional Staff Group I) or those authorized to act for them with respect to any claim, provided that:

(i) Any award, compromise, or settlement in excess of $150,000 but not more than $300,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I); provided further that whenever a settlement is effected in an amount in excess of $100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice; and

(ii) Any award where, for any reason, the compromise of a particular claim, as a practical matter, will, or may control the disposition of a related claim in which the amount to be paid may exceed $150,000 shall be effected only with the prior written approval of the

General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I); and

(iii) Any award, compromise, or settlement in excess of $300,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I) and with the prior written approval of the Attorney General or his or her designee.

(d) * * *

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that any award, compromise, or settlement in excess of $300,000 shall be effected only with the prior written approval of the Attorney General or his or her designee; provided further that whenever a settlement is effected in an amount in excess of $100,000, a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(Authority: 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671–80; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

[FR Doc. E9–30093 Filed 12–17–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA201–5202; FRL–9093–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Update to Materials Incorporated by Reference; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change; correcting amendment.

SUMMARY: This document corrects errors in the part 52 Identification of Plan tables for Virginia published on July 13, 2009 which summarizes the applicable regulatory, source-specific, and non-regulatory requirements which comprise the current EPA-approved Virginia State Implementation Plan (SIP).

DATES: *Effective Date:* This action is effective December 18, 2009.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation (OAR) Docket/Telephone number: (202) 566–1742; or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at *frankford.harold@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 13, 2009 (74 FR 33332), EPA published an update of materials submitted by Virginia that are incorporated by reference (IBR) into the Virginia State implementation plan (SIP) as of June 1, 2009. The regulations, source-specific requirements, and non-regulatory requirements affected by this update (summarized in the tables cited as 40 CFR 52.2420(c), (d), and (e) respectively) had been previously submitted by the Virginia Department of Environmental Quality (DEQ) and approved by EPA. In this update action, EPA announced the following revisions to entries listed in the paragraph 52.2420(c), (d) and (e) tables:

- Correction of typographical errors to the text and the dates published in these tables.
- Removal of the quotation marks from the terms listed in the ''Explanation [former SIP section]'' column.
- Removal of entries 5–80–1835, 5–80–1845, and 5–80–1855, from the paragraph (c) table, since they are designated as ''reserved,'' and contain no text that is incorporated by reference.
- Correction of the date format in the paragraph (c), (d) and (e) tables so that there were no placeholder zeros in the month or day (e.g., the date format would be 1/1/08, not 01/01/08).

However, the tables cited as 40 CFR 52.2420(c) through (e), and published on pages 33334 through 33364, still contained entries that did not reflect the described revisions. This action corrects those tables in 40 CFR 52.2420(c) through (e), as described herein:

1. Page 33334—a. Entry 5–10–20—in the ''Explanation [former SIP citation]'' column, remove the quotation marks from ''volatile organic compound.''

b. Entries 5–20–203 and 5–20–204—revise the date in the ''State effective date'' column from ''7/29/08'' to ''12/12/07.''

2. Page 33335—a. Entries 5–20–205—revise the date format in the ''State effective date'' column from ''01/01/98,'' ''04/01/98,'' ''01/01/99,'' and ''08/25/04'' to ''1/1/98,'' ''4/1/98,'' ''1/1/99'' and ''8/25/04,'' respectively.

b. Entry 5–20–206—revise the date format in the ''State effective date'' column from ''10/04/06'' to ''10/4/06.''

3. Page 33338—a. The first entry for 5–40–1670, in the ''Title/subject'' column, capitalize the first word in each listed definition.

b. Entries 5–40–1670 (second entry), and 5–40–1750—revise the date format in the ''State effective date'' column from ''4/01/99'' to ''4/1/99.''

4. Page 33339—Entry 5–40–1810—revise the date format in the ''State effective date'' column from ''4/01/99'' to ''4/1/99.''

5. Page 33345—a. Entry 5–40–5610—in the ''Explanation [former SIP citation]'' column, move the term ''clean wood'' from list of ''terms added'' to the list of ''terms revised.''

b. Remove the first entry for 5–40–5700 from the table in paragraph (c).

6. Page 33347—Entry 5–40–7810—in the ''Title/subject'' column, capitalize the first word in each listed definition.

7. Page 33350—Remove ''reserved'' entries 5–80–1835, 5–80–1845 and 5–80–1855 from the table in paragraph (c).

8. Page 33355—Entry 5–140–1150—restore the EPA approval date and page citation (12/28/07, 72 FR 73602) in the ''EPA approval date'' column.

9. Page 33356—Entry 5–140–1800—restore the State effective date and the EPA approval date and page citation in the ''State effective date'' and ''EPA approval date'' columns, respectively.

10. Pages 33361 and 33362—Revise the date format in the ''EPA approval date'' column from ''1/02/01'' to ''1/2/01'' for the following entries in the paragraph (d) table:

Cellofoam North America, Inc.—Falmouth Plant [Consent Agreement].

CNG Transmission Corporation—Leesburg Compressor Station [Permit to Operate]. Columbia Gas Transmission Company—Loudoun County Compressor Station [Permit to Operate].

District of Columbia's Department of Corrections—Lorton Correctional Facility [Permit to Operate].

Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill [Permit to Operate]. Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport [Permit to Operate].

Noman M. Cole, Jr., Pollution Control Plant [Consent Agreement].

Ogden Martin Systems of Alexandria/Arlington, Inc. [Consent Agreement].

Ogden Martin Systems of Fairfax, Inc. [Consent Agreement].

U.S. Department of Defense—Pentagon Reservation [Permit to Operate].

Potomac Electric Power Company (PEPCO)—Potomac River Generating Station [Consent Agreement],

Potomac Electric Power Company (PEPCO)—Potomac River Generating Station.

United States Marine Corps.—Quantico Base [Permit to Operate].

Transcontinental Gas Pipeline Corporation—Compressor Station No.185 [Consent Agreement].

U.S. Army Garrison at Fort Belvoir [Permit to Operate].

Virginia Power (VP)—Possum Point Generating Station [Permit containing NO_X RACT requirements].

Virginia Electric and Power Company—Possum Point Generating Station [Consent Agreement containing VOC RACT requirements].

Washington Gas Light Company—Springfield Operations Center [Consent Agreement].

11. Page 33363—In the entry for Documents Incorporated by Reference (9 VAC 5–20–21, Paragraphs E.4.a. (21) and (22)), revise the date format in the ''State submittal date'' and ''Additional explanation'' column from ''05/14/07'' and ''10/04/06'' to ''5/14/07'' and ''10/4/06,'' respectively.

12. Page 33364—In the entry for Attainment Demonstration and Early Action Plan for the Northern Shenandoah Valley Ozone Early Action Compact Area, revise the date format in the ''State submittal date'' column from ''02/15/05'' to ''2/15/05.''

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this rule is not substantive and imposes no regulatory requirements, but merely corrects a citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

All SIP materials incorporated by reference in paragraphs (c) and (d) are available for public inspection at the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, the EPA Regional Office, and the National Archives and Records Administration.

Statutory and Executive Order Reviews

General Requirements

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of *December 18, 2009.* 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 action to correct the tables in 40 CFR 52.2420(c), (d), and (e) for Virginia is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 4, 2009.

James W. Newsom,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart VV—Virginia

■ 2. In § 52.2420, the tables in paragraphs (c), (d) and (e) are amended by:

■ a. Revising the following entries in paragraph (c): 5–10–20 (sixth entry), 5–20–203 through 5–20–206, 5–40–1660, 5–40–1670, 5–40–1750, 5–40–1810, 5–40–5610 (first entry), 5–40–7810, 5–140–1150, and 5–140–1800.

■ b. Removing the following entries in paragraph (c): 5–40–5700 (first entry), 5–80–1835, 5–80–1845, and 5–80–1855.

■ c. Revising the following entries in paragraph (d): Cellofoam North America, Inc.—Falmouth Plant [Consent Agreement], CNG Transmission Corporation—Leesburg Compressor Station [Permit to Operate], Columbia Gas Transmission Company—Loudoun County Compressor Station [Permit to Operate], District of Columbia's Department of Corrections—Lorton Correctional Facility [Permit to Operate], Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill [Permit to Operate], Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport [Permit to Operate], Norman M. Cole, Jr., Pollution Control Plant [Consent Agreement], Ogden Martin Systems of Alexandria/Arlington, Inc. [Consent Agreement], Ogden Martin Systems of Fairfax, Inc. [Consent Agreement], U.S. Department of Defense—Pentagon Reservation [Permit to Operate], Potomac Electric Power Company (PEPCO)—Potomac River Generating Station [Consent Agreement], Potomac Electric Power Company (PEPCO)—Potomac River Generating Station, United States Marine Corps.—Quantico Base [Permit to Operate], Transcontinental Gas Pipeline Corporation—Compressor Station No.185 [Consent Agreement], U.S. Army Garrison at Fort Belvoir [Permit to Operate], Virginia Power (VP) Possum Point Generating Station [Permit containing NO_X RACT requirements], Virginia Electric and Power Company—Possum Point Generating Station [Consent Agreement containing VOC RACT requirements], and Washington Gas Light Company—Springfield Operations Center [Consent Agreement].

■ d. Revising the entries in paragraph (e): Documents Incorporated by Reference (9 VAC 5–20–21, Paragraphs E.4.a. (21) and (22)), and Attainment Demonstration and Early Action Plan for the Northern Shenandoah Valley Ozone Early Action Compact Area.

The amendments read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
	9 VAC 5 Chapter 10 General Definitions [Part I]			
*	*	*	*	*
5–10–20	Terms Defined	5/4/05	8/18/06, 71 FR 47742	Definition of volatile organic compound.
*	*	*	*	*
	9 VAC 5 Chapter 20 General Provisions			
*	*	*	*	*
	Part II Air Quality Programs			
*	*	*	*	*
5–20–203	Air Quality Maintenance Areas	12/12/07	10/29/08, 73 FR 64210	Richmond and Hampton Roads 8-Hour Ozone Areas are added.
5–20–204	Nonattainment Areas	12/12/07	10/29/08, 73 FR 64210	Richmond and Hampton Roads 8-Hour Ozone Areas are deleted.
5–20–205	Prevention of Significant Deterioration Areas	1/1/98, 4/1/98, 1/1/99, 8/25/04	8/18/06, 71 FR 47744	
5–20–206	Volatile Organic Compound and Nitrogen Oxides Emissions Control Areas.	10/4/06	3/2/07, 72 FR 9441	Addition of new Fredericksburg Area and expansion of Richmond and Hampton Roads Emission Control Areas.
*	*	*	*	*
	Article 13 Emission Standards for Kraft Pulp and Paper Mills (Rule 4–13)			
5–40–1660	Applicability and Designation of Affected Facility	4/1/99	10/19/07, 72 FR 59207	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–40–1670	Definitions of Cross recovery furnace, Kraft pulp mill, Lime kiln, Recovery furnace, Smelt dissolving tank.	4/17/95	4/21/00, 65 FR 21315	120–04–1302 Remaining definitions are federally enforceable as part of the Section 111(d) plan for kraft pulp mills (see, § 62.11610).
	Definitions	4/1/99	10/19/07, 72 FR 59207	Added: Neutral sulfite semi chemical pulping operation, New design recovery furnace, Pulp and paper mill, Semi chemical pulping process; Straight kraft recovery furnace. Revised: Cross recovery furnace.
*	*	*	*	*
5–40–1750	Compliance	4/1/99	10/19/07, 72 FR 59207	
*	*	*	*	*
5–40–1810	Permits	4/1/99	10/19/07, 72 FR 59207	
*	*	*	*	*
Article 40 Emission Standards for Open Burning (Rule 4–40)				
*	*	*	*	*
5–40–5610	Definitions	10/18/06	3/19/09, 74 FR 11661	Terms added: Air curtain incinerator, Clean lumber, Clean wood, Wood waste, and Yard waste. Terms revised: Clean burning waste, Commercial waste, Construction waste, Debris waste, Demolition waste, Garbage, Hazardous waste, Household waste, Industrial waste, Junkyard, Open burning, Open pit incinerator, Refuse, Sanitary landfill, and Special incineration device.
*	*	*	*	*
Article 53 Emission Standards for Lithographic Printing Processes (Rule 4–53) [Formerly Article 45]				
*	*	*	*	*
5–40–7810	Definitions of Alcohol, Cleaning solution, Fountain solution, Lithographic printing, Printing process.	4/1/96, 10/4/06	3/2/07, 72 FR 9441	

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
*	*	*	*	*
9 VAC 5 Chapter 140 Regulation for Emissions Trading				
*	*	*	*	*
Part II NO_X Annual Trading Program				
*	*	*	*	*
Article 2 CAIR-designated Representative for CAIR NO_X Sources				
*	*	*	*	*
5–140–1150	Delegation by CAIR-designated representative and alternate CAIR-designated representative.	4/18/07	12/28/07, 72 FR 73602	
*	*	*	*	*
Article 9 CAIR NO_X Opt-in Units				
5–140–1800	Applicability.	4/18/07	12/28/07, 72 FR 73602	
*	*	*	*	*

(d) *EPA-Approved State Source-Specific Requirements*

EPA-APPROVED SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
*	*	*	*	*
Cellofoam North America, Inc.—Falmouth Plant [Consent Agreement].	Registration No. 40696; FSO–193–98.	8/10/98	1/2/01, 66 FR 8.	52.2420(d)(3).
CNG Transmission Corporation—Leesburg Compressor Station [Permit to Operate].	Registration No. 71978; County-Plant No. 107–0101.	5/22/00	1/2/01, 66 FR 8.	52.2420(d)(3).
Columbia Gas Transmission Company—Loudoun County Compressor Station [Permit to Operate].	Registration No. 72265; County-Plant No. 107–0125.	5/23/00	1/2/01, 66 FR 8.	52.2420(d)(3).
District of Columbia's Department of Corrections—Lorton Correctional Facility [Permit to Operate].	Registration No. 70028; County-Plant No. 0059–0024.	12/10/99	1/2/01, 66 FR 8.	52.2420(d)(3).
Michigan Cogeneration Systems, Inc.—Fairfax County I–95 Landfill [Permit to Operate].	Registration No. 71961; County-Plant No. 0059–0575.	5/10/00	1/2/01, 66 FR 8.	52.2420(d)(3)
Metropolitan Washington Airports Authority—Ronald Reagan Washington National Airport [Permit to Operate].	Registration No. 70005; County-Plant No. 0013–0015.	5/22/00	1/2/01, 66 FR 8.	52.2420(d)(3).
Noman M. Cole, Jr., Pollution Control Plant [Consent Agreement].	Registration No. 70714	12/13/99	1/2/01, 66 FR 8.	52.2420(d)(3).
Ogden Martin Systems of Alexandria/Arlington, Inc. [Consent Agreement].	Registration No. 71895; NVRO–041–98.	7/31/98	1/2/01, 66 FR 8.	52.2420(d)(3).
Ogden Martin Systems of Fairfax, Inc. [Consent Agreement].	Registration No. 71920	4/3/98	1/2/01, 66 FR 8.	52.2420(d)(3).
U.S. Department of Defense—Pentagon Reservation [Permit to Operate].	Registration No. 70030; County-Plant No. 0013–0188.	5/17/00	1/2/01, 66 FR 8.	52.2420(d)(3).
Potomac Electric Power Company (PEPCO)—Potomac River Generating Station [Consent Agreement].	Registration No. 70228; NVRO–106–98.	7/31/98	1/2/01, 66 FR 8.	52.2420(d)(3) NO_X RACT requirements.
Potomac Electric Power Company (PEPCO)—Potomac River Generating Station.	Registration No. 70228; County Plant No. 510–0003.	5/8/00	1/2/01, 66 FR 8.	52.2420(d)(3) VOC RACT requirements.

EPA-APPROVED SOURCE-SPECIFIC REQUIREMENTS—Continued

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
United States Marine Corps.—Quantico Base [Permit to Operate].	Registration No. 70267; County-Plant No. 153–0010..	5/24/00	1/2/01, 66 FR 8.	52.2420(d)(3).
Transcontinental Gas Pipeline Corporation—Compressor Station No.185 [Consent Agreement].	Registration No. 71958	9/5/96	1/2/01, 66 FR 8.	52.2420(d)(3).
U.S. Army Garrison at Fort Belvoir [Permit to Operate].	Registration No. 70550; County-Plant No. 059–0018.	5/16/00	1/2/01, 66 FR 8.	52.2420(d)(3).
Virginia Power (VP)—Possum Point Generating Station [Permit containing NO_X RACT requirements].	Registration No. 70225; County-Plant No. 153–0002.	7/21/00	1/2/01, 66 FR 8.	52.2420(d)(3).
Virginia Electric and Power Company—Possum Point Generating Station [Consent Agreement containing VOC RACT requirements].	Registration No. 70225	6/12/95	1/2/01, 66 FR 8.	52.2420(d)(3).
Washington Gas Light Company—Springfield Operations Center [Consent Agreement].	Registration No. 70151; NVRO–031–98.	4/3/98	1/2/01, 66 FR 8.	52.2420(d)(3).
* *	*	*	*	*

(e) *EPA-approved non-regulatory and quasi-regulatory material.*

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	* *	*	*
Documents Incorporated by Reference (9 VAC 5–20–21, Paragraphs E.4.a. (21) and (22))..	Fredericksburg VOC Emissions Control Area Designated in 9 VAC 5–20–206.	05/14/07	12/5/07, 72 FR 68511.	State effective date is 10/4/06.
* *	*	* *	*	*
Attainment Demonstration and Early Action Plan for the Northern Shenandoah Valley Ozone Early Action Compact Area.	City of Winchester and Frederick County.	12/20/04, 2/15/05	8/17/05, 70 FR 43280.	
* *	*	* *	*	*

[FR Doc. E9–30041 Filed 12–17–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0009; FRL–8798–1]

Chlorimuron Ethyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of chlorimuron ethyl, including its metabolites and degradates, in or on corn, field, forage; corn, field grain; corn, field, stover; grain, aspirated fractions; soybean, forage; and soybean, hay. In addition, the presently established tolerance term, ''soybean'' is being revised to ''soybean, seed.'' E.I. du Pont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2009–0009. 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: Beth Benbow, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8072; e-mail address: *benbow.bethany@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–2009–0009 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 February 16, 2010.

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–2009–0009, 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. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), 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 (PPs 8F7430 and 8F7439) by E.I. du Pont de Nemours and Company, Laurel Run Plaza, P.O. Box 80038, Wilmington, DE 19880–0038. The petitions requested that 40 CFR 180.429 be amended by establishing tolerances for residues of the herbicide chlorimuron ethyl, ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2yl)amino]carbonyl]sulfonyl]benzoate], in or on (PP 8F7430) corn, field grain at 0.01 parts per million (ppm); corn, field, forage at 0.5 ppm; corn, field, stover at 2.0 ppm; corn, field, meal at 0.014 ppm; corn, field, flour at 0.015 ppm; corn, aspirated grain fractions at 1.28 ppm; and (PP 8F7439) soybean, seed at 0.01 ppm; soybean, forage at 0.45 ppm; soybean, hulls at 0.04 ppm; soybean, aspirated grain fractions at 2.79 ppm; and soybean, hay at 1.8 ppm. That notice referenced a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that tolerances are not needed for residues of chlorimuron ethyl on the following: Corn, field, meal; corn, field, flour; and soybean, hulls. EPA has also determined that the presently established tolerance of 0.05 ppm is appropriate for soybean in lieu of the proposed tolerance of 0.01 ppm for soybean, seed. Because soybean, seed is the designated EPA term for soybeans, the existing soybean tolerance is being amended to use that term. Additionally, EPA has determined that a single tolerance of 3.0 ppm should be established for grain, aspirated fractions in lieu of the proposed separate tolerances on corn, aspirated grain fractions; and soybean, aspirated grain fractions. EPA has also revised the tolerance expression for chlorimuron ethyl to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The reasons for these changes are explained in Unit IV.C.

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 residues of chlorimuron ethyl, including its metabolites and degradates on corn, field forage at 0.5 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 2.0 ppm; grain, aspirated fractions at 3.0 ppm; soybean,

forage at 0.45 ppm; and soybean, hay at 1.8 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.

Chlorimuron ethyl has low or minimal acute toxicity via the oral, dermal and inhalation routes of exposure. It is mildly irritating to the eye and non-irritating to the skin; it is not a skin sensitizer.

In subchronic toxicity studies with chlorimuron ethyl: No adverse effects were observed up to the limit dose tested in mice; decreased body weight gain and liver pathology (margination of hepatocyte cytoplasmic content in the centrilobular areas) were observed in rats (males only); and mild hemolytic anemia, atrophy of the thymus and prostate and increased liver weights were seen in dogs. Chronic exposure of dogs to chlorimuron ethyl also led to mild anemia (decreased erythrocyte count, hematocrit, and hemoglobin concentration), but atrophy of the thymus and prostate were not seen. In rats, treatment-related effects observed were limited to decreased body weight and body weight gain in both sexes after long-term exposure. Prostatitis (males) and fatty replacement in the pancreas (both sexes) were also observed but considered incidental occurrences. Biliary hyperplasia/fibrosis seen in females was attributed to aging. In mice, there were no treatment-related effects observed up to the highest dose tested (216 milligrams/kilograms/day (mg/kg/day)). There were no treatment-related increases in tumors in rat and mouse carcinogenicity studies after exposure to chlorimuron ethyl. Chlorimuron ethyl is classified as ''Not Likely to be Carcinogenic to Humans.''

In the developmental toxicity studies, decreases in maternal body weight gain and delayed ossification in fetuses were observed in rats at the same dose (150 mg/kg/day). In rabbits, decreases in maternal body weight gain were seen at 300 mg/kg/day, while delayed ossification was seen in fetuses at a lower dose of 48 mg/kg/day, indicating increased quantitative susceptibility. In a guideline 2–generation reproduction study in rats, decreased body weight and histopathology in the cerebellum (cellular changes in the internal granular and external germinal layers) were seen in pups at 177 mg/kg/day. These effects were seen in the absence of maternal toxicity, indicating potential increased quantitative susceptibility of the pups to chlorimuron ethyl. However, these effects were not associated with any neurotoxicity or neurobehavioral changes and were not observed in other reproduction studies in rats. In a non-guideline reproduction toxicity study (1–generation) in rats, decreased body weight (females) and liver histopathology (males) were seen in parental animals at 173 mg/kg/day, along with decreases in litter weights. In another reproduction study (1–year interim sacrifice) in rats, decreases in maternal and pup body weights were observed at 195 mg/kg/day.

There is no indication of neurotoxicity in the toxicity database for chlorimuron ethyl. In a 2–generation reproduction study in rats, histopathological alterations were seen in the cerebellum (cellular changes in the internal granular and external germinal layers) of F2 pups at 177 mg/kg/day; however, these findings were not associated with any neurobehavioral changes or any indications of neurotoxicity. In addition, these histopathological alterations were not observed in two other reproduction studies, and there was no evidence of neurotoxicity observed in other rat toxicity studies or toxicity studies in other species (rabbits, mice, or dogs).

Hematological changes (indicative of mild anemia) and atrophy of the thymus were observed in dogs after subchronic exposure. However, atrophy of the thymus was not associated with any histopathology and not seen after chronic exposure. No other potential immunotoxic effects were observed in the toxicology database.

Specific information on the studies received and the nature of the adverse effects caused by chlorimuron ethyl 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 ''Chlorimuron ethyl. Human Health Risk Assessment for Proposed Uses on Field Corn and Soybean, PPs 8F7430 and 8F7439,'' page 45 in docket ID number EPA–HQ–OPP–2009–0009.

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*.

A summary of the toxicological endpoints for chlorimuron ethyl used for human risk assessment can be found at *http://www.regulations.gov* in document ''Chlorimuron ethyl. Human Health Risk Assessment for Proposed Uses on Field Corn and Soybean, PPs 8F7430 and 8F7439,'' page 20 in docket ID number EPA–HQ–OPP–2009–0009.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to chlorimuron ethyl, EPA considered exposure under the petitioned-for tolerances as well as all existing chlorimuron ethyl tolerances in 40 CFR 180.429. EPA assessed dietary exposures from chlorimuron ethyl 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. No such effects were identified in the toxicological studies for chlorimuron ethyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys of Food Intakes 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 chlorimuron ethyl.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA classified chlorimuron ethyl as ''Not Likely to be Carcinogenic to Humans.'' Therefore, an exposure assessment for evaluating cancer risk is not needed for this chemical.

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of chlorimuron ethyl were determined for acute exposures and chronic exposures for non-cancer assessments assuming a maximum seasonal use rate of 0.25 lb chlorimuron ethyl per acre. EDWCs for acute exposures are estimated to be 11.98 parts per billion (ppb) for surface water and 6.99 ppb for ground water. EDWCs for chronic exposures for non-cancer assessments are estimated to be 5.02 ppb for surface water and 6.99 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the most conservative water concentration value of 6.99 ppb was used to assess the contribution to chlorimuron ethyl dietary exposure from drinking water. Acute dietary risk assessments were not conducted since no toxicological endpoint attributable to a single dose of chlorimuron ethyl has been identified. Cancer dietary risk assessments were not conducted since there is no cancer concern for chlorimuron ethyl.

In a summary of results from a pilot monitoring program conducted by the U.S. Geological Survey, data show that chlorimuron ethyl has been detected in drinking water of water supply reservoirs, but only at maximum concentrations magnitudes lower than those predicted by the FIRST model.

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). Chlorimuron ethyl is not registered for any specific use patterns that would result in residential exposure.

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 chlorimuron ethyl to share a common mechanism of toxicity with any other substances, and chlorimuron ethyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that chlorimuron ethyl 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 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 chlorimuron ethyl includes guideline rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats, as well as two additional non-guideline reproduction studies in rats (a 1–generation study and 1–year interim sacrifice study). No evidence of increased prenatal or postnatal susceptibility was seen in the developmental toxicity study in rats or in the non-guideline reproduction toxicity studies in rats. In the rabbit developmental study, delayed ossification was observed in fetuses at 48 mg/kg/day, while maternal effects (decreased body weight gain) were seen at 300 mg/kg/day, suggesting increased quantitative susceptibility of fetuses. In the 2–generation rat reproduction study, decreased body weight and histopathology findings in the cerebellum were observed in pups at 177/214 mg/kg/day (male/female) in the absence of maternal toxicity, also suggesting increased quantitative susceptibility of the pups.

Although the data suggest increased quantitative susceptibility in the developmental rabbit study and the 2–generation rat reproduction study, there are no residual uncertainties with regard to prenatal toxicity following *in utero* exposure of rats or rabbits or prenatal and/or postnatal exposures of rats. The fetal effect seen in rabbits was limited to delayed ossification, and, although effects (histopathology in the cerebellum) were seen in a rat reproduction study, there was no evidence of increased susceptibility observed in two additional reproduction studies in rats. Additionally, there are clear NOAELs for the offspring effects seen in rabbits (NOAEL=13 mg/kg/day) and rats (17 mg/kg/day). Finally, the NOAEL (9 mg/kg/day) used to establish the chronic Reference Dose of 0.09 mg/kg/day is considered protective of potential developmental effects observed at the higher doses. Considering the overall toxicity database and doses selected for risk assessment, the degree of concern for the effects observed in the studies is low.

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 1X. That decision is based on the following findings:

The toxicity database for chlorimuron ethyl is adequate to characterize potential prenatal and postnatal risk for infants and children. Acceptable/guideline studies for developmental toxicity in rats and rabbits and reproduction toxicity in rats are available for FQPA assessment.

On December 26, 2007, EPA began requiring functional immunotoxicity testing and acute and subchronic neurotoxicity testing of all food and non-food use pesticides. These studies are not yet available for chlorimuron ethyl. In the absence of specific immunotoxicity and neurotoxicity studies, EPA has evaluated the available chlorimuron ethyl toxicity data and determined that an additional uncertainty factor is not required to account for the lack of these studies. The reasons for this determination are explained below:

i. Hematological changes (indicative of mild anemia) and atrophy of the thymus were observed in dogs following subchronic exposure to chlorimuron-ethyl at a dose of 45.8/42.7 (M/F) mg/kg/day, indicating potential immunotoxicity. However, atrophy of the thymus was not associated with any histopathology and was not seen after chronic exposure; and no other potential immunotoxic effects were observed in the toxicology database. Therefore, EPA does not believe that conducting immunotoxicity testing will result in a NOAEL less than the NOAEL of 9 mg/kg/day already established for chlorimuron ethyl, and an additional factor (UFDB) for database uncertainties is not needed to account for potential immunotoxicity.

ii. There is no indication in the toxicity database that chlorimuron ethyl is a neurotoxic chemical. No signs indicative of neurotoxicity were seen in subchronic and chronic studies conducted with dogs, mice and rats. In a 2-generation reproduction study in rats, histopathological alterations were seen in the cerebellum of F2 pups at the high dose (177 mg/kg/day). However, these findings were not associated with any neurobehavioral changes or any other indications of neurotoxicity. In addition, these histopathological alterations were not observed in two other reproduction studies with chlorimuron ethyl. Based on these considerations, EPA does not believe that a developmental neurotoxicity study is warranted at this time and there is no need for an additional UF to account for the lack of acute and subchronic neurotoxicity studies.

iii. Although there is evidence of increased quantitative susceptibility in the developmental rabbit study and the 2-generation rat reproduction study, the degree of concern for the effects observed in the studies is low, and there are no residual uncertainties with regard to prenatal toxicity following *in utero* exposure of rats or rabbits or prenatal and/or postnatal exposures of rats.

iv. There are no residual uncertainties identified in the exposure databases. The food exposure assessments were performed based on the assumptions of 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to chlorimuron ethyl in drinking water. Chlorimuron ethyl is not registered for residential use. These assessments will not underestimate the exposure and risks posed by chlorimuron ethyl.

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-, intermediate-, 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. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, chlorimuron ethyl is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to chlorimuron ethyl from food and water will utilize 1% or less of the cPAD for the general population and all population subgroups, including infants and small children. There are no residential uses for chlorimuron ethyl.

3. *Short/intermediate-term risk.* Short-term and intermediate-term aggregate exposure take into account short-term or intermediate-term residential exposure plus chronic exposure from food and water (considered to be a background exposure level). Chlorimuron ethyl is not registered for any use patterns that would result in residential exposure. Therefore, the short-term or intermediate-term aggregate risk is the sum of the risk from exposure to chlorimuron ethyl through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population.* Based on a lack of evidence for carcinogenicity in mice and rats following long-term dietary administration, chlorimuron ethyl is not expected to pose a cancer risk.

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 chlorimuron ethyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography (HPLC) using a photoconductivity detector with a method limit of quantitation (LOQ) of 0.01 ppm (AMR-459-85)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no established or proposed Codex or Mexican maximum residue limits (MRLs) for residues of chlorimuron ethyl for corn or soybean commodities; however, there is a Canadian MRL for soybeans (0.05 mg/kg), which harmonizes with the current U.S. tolerance on soybeans.

C. Revisions to Petitioned-For Tolerances

EPA has determined that tolerances are not needed for the following: Corn, field, meal; corn, field, flour; and soybean, hulls. Tolerances for the processed commodities of corn, field, meal and corn, field, flour are not needed because these commodities are not expected to have residues greater than the tolerance on the raw agricultural commodity, field corn grain. EPA has also determined that tolerances for corn and soybean aspirated grain fractions will not be listed individually, but will be combined under the single tolerance, grain, aspirated fractions at 3.0 ppm based on the soybean aspirated grain fraction data. The current tolerance for residues of chlorimuron ethyl on soybeans at 0.05 ppm is not being amended as requested. Although adequate residue data are available indicating that residues on soybean were less than 0.01 ppm in/on all seed samples following an application at the R1-R2 stage, the existing 0.05 ppm

tolerance will cover this use and is additionally required for harmonization purposes with the Canadian MRL. However, the soybean tolerance is being amended to change the commodity name to ''soybean, seed'' which is the current EPA designated term for this commodity. A tolerance for residues in/on soybean, hulls is not required as this commodity will be covered by the existing 0.05 ppm tolerance on soybean, seed.

Finally, EPA is revising the tolerance expression for all new and existing commodities to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression makes clear that the tolerances cover ''residues of chlorimuron ethyl, including its metabolites and degradates'' and that compliance with the tolerance levels will be determined by measuring only chlorimuron ethyl, ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2yl)amino]carbonyl]sulfonyl]benzoate]. EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of chlorimuron ethyl, including its metabolites and degradates, in or on corn, field grain at 0.01 ppm; corn, field, forage at 0.5 ppm; corn, field, stover at 2.0 ppm; soybean, forage at 0.45 ppm; soybean, hay at 1.8 ppm, and grain, aspirated fractions at 3.0 ppm. In addition, the presently established tolerance term, ''Soybean'' is being revised to ''Soybean, seed.'' Compliance with the tolerance levels will be determined by measuring only chlorimuron ethyl, ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2yl)amino]carbonyl]sulfonyl]benzoate], in or on the commodity.

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: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.429 is amended by revising the introductory text to paragraph (a), revising the tolerance term ''Soybean'' to read ''Soybean, seed'' and alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.429 Chlorimuron ethyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide chlorimuron ethyl, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified in the following table is to be determined by measuring only chlorimuron ethyl, ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2yl)amino]carbonyl]sulfonyl]benzoate] in or on the following commodities:

Commodity	Parts per million
* * *	* *
Corn, field, forage	0.5
Corn, field, grain	0.01
Corn, field, stover	2.0
Grain, aspirated fractions	3.0
* * *	* *
Soybean, forage	0.45
Soybean, hay	1.8
Soybean, seed	0.05

* * * * *

[FR Doc. E9–30032 Filed 12–17–09; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0937; FRL–8800–7]

Quinclorac; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of quinclorac in or on grass, forage at 150 ppm and grass, hay at 130 ppm. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2008–0937. 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: Hope Johnson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5410; e-mail address: *johnson.hope@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 Get Electronic Access to Other Related Information?

You may 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–2008–0937 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 February 16, 2010.

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–2008–0937, 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. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15974) (FRL–8407–4), 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 8F7442) by BASF Corporation, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, NC 27709–3528. The petition requested that 40 CFR 180.463 be amended by establishing tolerances for residues of the herbicide quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid, in or on grass, forage at 105 and grass, hay at 70 parts per million (ppm). That notice referenced a summary of the petition prepared by BASF 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.

Based upon review of the data supporting the petition, EPA has concluded that 40 CFR 180.463 can be amended by establishing tolerances for residues of the herbicide quinclorac in or on grass, forage at 150 ppm and grass, hay at 130 ppm instead of the petitioned for 105 ppm on grass, forage and 70 ppm on grass, hay. The reason for these changes are explained in Unit IV.C.

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 residues of quinclorac on grass, forage at 150 ppm and grass, hay at 130 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

In the **Federal Register** of October 7, 2009 (74 FR 51485) (FRL–8434–3) the Agency published a final rule establishing tolerances for residues of quinclorac in or on cranberry at 15.0 ppm. The Agency conducted risk assessments to support that tolerance action.

The risk assessment associated with this 8F7442 petition request on grass, forage and grass, hay assessed the possibility that grass, forage and hay can be used as livestock feed stuffs and found that the current tolerances established for quinclorac for livestock commodities are adequate to cover the proposed new use on pasture and rangeland. In addition, the drinking water assessment conducted concluded that Estimated Drinking Water Concentrations (EDWCs) of quinclorac in surface water and ground water resulting from the new use are less than the previously assessed EDWCs from the use on cranberry. No new residential uses are requested in the 8F7442 petition. Therefore, no change in the dietary exposure (from food and water) is expected, and establishing tolerances on grass, forage and grass, hay will not change the most recent estimated aggregate risks resulting from use of quinclorac, as discussed in the October 7, 2009 **Federal Register**. Refer to the October 7, 2009 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document, along with the risk assessment completed on this petition request in support of this action. The risk assessment completed for this petition request can be found at *http://www.regulations.gov* in document ''Human Health Risk Assessment for Quinclorac New Use on Pasture/Rangeland'' in docket ID number EPA–HQ–OPP–2008–0937.

Therefore, based on the risk assessment discussed in the final rule published in the **Federal Register** of October 7, 2009, and the risk assessment completed in support of this petition request, 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 quinclorac residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate analytical methods utilizing gas chromatography with electron capture detection (GC/ECD), are available to enforce the tolerance expression on plant (BASF Mehod A8902, Master Record Identification Number (MRID) 41063537) and livestock commodities (BASF Method 268/1, MRID 41063536), and the limit of quantitation (LOQ) for quinclorac is 0.05 ppm by these methods. Both methods have undergone successful agency method validation trials and have been submitted to the Food and Drug Administration (FDA) for publication in PAM II as the tolerance enforcement methods. Furthermore, the available FDA multi-residue method (MRM) testing data indicate that quinclorac is completely recovered using Method 402 in PAM, Vol. 1.

B. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) established for quinclorac on grass, forage and grass, hay.

C. Revisions to Petitioned-For Tolerances

Review of available field trial data indicate that the proposed tolerances for grass, forage at 105 ppm and grass, hay at 70 ppm are too low; tolerances of 150 ppm and 130 ppm, respectively, are appropriate based on the results of analysis of the field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data.

V. Conclusion

Therefore, tolerances are established for residues of quinclorac, 3,7-dichloro-8-quinolinecarboxylic acid, in or on grass, forage at 150 ppm and grass, hay at 130 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: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.463 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.463 Quinclorac; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Grass, forage	150
Grass, hay	130
* * *	* *

* * * * *

[FR Doc. E9–30033 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0730; FRL–8804–8]

Endothall; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for indirect or inadvertent combined residues of endothall in or on multiple commodities identified and discussed elsewhere in this document. The Interregional Research Project Number 4 (IR-4) in cooperation with the registrant, United Phosphorus, Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2008–0730. 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: Sidney Jackson, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@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 Get Electronic Access to Other Related Information?

You may 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*. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select ''Test Methods & Guidelines'' on the left-side navigation menu.

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–2008–0730 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 February 16, 2010.

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–2008–0730, 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. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73644) (FRL–8386–9), 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 8E7419) by the IR-4, IR-4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.293 be amended by establishing tolerances for combined residues of the herbicide endothall, mono (*N,N*-dimethylalkylamine) salt of endothall, and the dipotassium salt of endothall, in or on Vegetable Root, and Tuber Group 1 at 2 ppm (parts per million); Vegetable, Leaves of Root and Tuber, Group 2 at 3.5 ppm; Vegetable, Bulb, Group 3-07 at 2 ppm; Vegetable, Leafy, except Brassica, Group 4 at 3.5 ppm; Vegetable, Brassica, Leafy, Group 5 at 0.1 ppm; Turnip, greens at 0.1 ppm; Vegetable, Legume, Group 6 at 3 ppm; Vegetable, Fruiting, Group 8 at 0.05 ppm; Okra at 0.05 ppm; Vegetable, Cucurbit, Group 9 at 1.1 ppm; Fruit, Citrus, Group 10 at 0.05 ppm; Fruit, Pome, Group 11 at 0.05 ppm; Fruit, Stone, Group 12 at 0.25 ppm; Berry and Small Fruit Group 13-07 at 0.6 ppm; Nut, Tree, Group 14, at 0.05 ppm; Pistachio at 0.05 ppm; Almond, hulls at 10 ppm; Grain, Cereal, Group 15 at 2.5 ppm; Grain, Cereal, Forage, Fodder and Hay, Group 16, forage at 3.5 ppm, Grain, Cereal, Forage, Fodder and Hay, Group 16, hay at 5 ppm, Grain, Cereal, Forage, Fodder and Hay, Group 16, stover at 11 ppm, Grain, Cereal, Forage, Fodder and Hay, Group 16, straw at 6 ppm, Grain, aspirated fractions at 24 ppm; Grass, Forage, Fodder, and Hay, Group 17, forage at 3 ppm, Grass, Forage, Fodder and Hay, hay at 19 ppm; Nongrass Animal Feed, Group 18 forage at 3.5 ppm, Nongrass Animal Feed, Group 18 hay at 8 ppm; Grape at 0.9 ppm, Peppermint, tops at 7 ppm, Spearmint, tops at 7 ppm; and Rice, grain at 1.7 ppm and Rice, straw at 4.5 ppm. That notice referenced a summary of the petition prepared by United Phosphorus, Inc., the registrant, on behalf of IR-4 which is available to the public in the docket, *http://www.regulations.gov*. This petition for tolerances was filed in conjunction with an application under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA'') for use of endothall in irrigation water and thus the broad request for tolerances. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition as well as the proposed use to irrigation canals, EPA has determined that virtually all crops as well as most food and feed commodities could potentially be exposed to residues in endothall-laden irrigation water with EPA approval of this use. In consideration of these factors, the Agency is revising the proposed tolerances to include inadvertent endothall residues on any food commodities not otherwise listed at 5.0 ppm and any feed commodities not otherwise listed at 10.0 ppm. Additionally, based on the residue data submitted, EPA has revised proposed tolerance levels for certain food and feed commodities. Finally, EPA is not establishing certain petitioned-for tolerances after determining they are not needed. 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 including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with endothall follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their 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.

Endothall is a caustic chemical with toxicity being the result of a direct degenerative effect on tissue. By acute dermal application and inhalation exposure, it has mild toxicity. Dermally, it destroys the stratum corneum and then the underlying viable epidermis. Endothall is a skin sensitizer. Endothall is an extreme irritant by the acute oral, and ocular routes of administration. Orally, endothall attacks the digestive tract. In the eye irritation study, endothall was shown to be extremely irritating to the eye and was also lethal to 4 of 6 rabbits tested.

In the 21–day dermal rat study, systemic toxicity (hematology and clinical chemistry alterations) were noted at a dose level that was one order of magnitude greater than that causing dermal irritation. Available studies clearly demonstrate that local irritation (portal of entry effect) is the most sensitive and initial effect, occurring at

dose levels lower than those associated with systemic toxicity. In dogs, gastric irritation developed at a dose level that was one order of magnitude lower than doses associated with clinical signs of toxicity (subdued behavior, poor condition, thin appearance and distended abdomen). In the rat, gastric irritation was noted at a dose level that was 1 to 2 orders of magnitude lower than doses resulting in kidney lesions. Besides gastric irritant effects, decreased body weight was also a sensitive effect following endothall administration. The decreased body weights were most likely attributable to the constant and direct irritation of the gastric lining. In a developmental rat study, pregnant rats exhibited decreased body weight and decreased body weight was noted in a 90–day dietary study in the rat. Body weight loss occurred in dogs following a 13 week oral treatment with endothall.

Endothall does not cause prenatal toxicity following *in utero* exposure to rats nor prenatal or postnatal toxicity following exposures to rats for 2–generations. In the developmental mouse study, there was severe maternal toxicity (i.e., greater than 30% mortality) at the highest dose tested; at this dose level, a slight increase in vertebral and rib malformations was observed in the offspring indicating that these effects were most likely secondary to severe maternal toxicity.

Available studies showed no evidence of neurotoxicity and do not indicate potential immunotoxicity. Endothall does not belong to the class of compounds (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be toxic to the immune system. Endothall is classified as ''not likely to be carcinogenic to humans'' based on lack of evidence of carcinogenicity in mice or rats. It has no mutagenic potential.

Specific information on the studies received and the nature of the adverse effects caused by endothall 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 ''Endothall: Revised Human Health Risk Assessment for the Section 3 Registration Action to Support a New Use of Endothall in Irrigation Canals with No Required Holding Period before that Water Can Be Used on Crops,'' dated 11/09/2009, page 16 in docket ID number EPA–HQ–OPP–2008–0730–0004.

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-term, intermediate-term, 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*.

A summary of the toxicological endpoints for endothall used for human risk assessment can be found at *http://www.regulations.gov* in document entitled; ''Endothall: Revised Human Health Risk Assessment for the Section 3 Registration Action to Support a New Use of Endothall in Irrigation Canals with No Required Holding Period before that Water Can Be Used on Crops,'' dated 11/09/2009, page 21 in docket ID number EPA–HQ–OPP–2008–0730–0004.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to endothall, EPA considered exposure under the petitioned-for tolerances as well as all existing endothall tolerances in 40 CFR 180.293. EPA assessed dietary exposures from endothall 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.

No systemic toxicity resulting from a single exposure was identified. An acute Reference Dose (RfD) was not established for any population subgroup because an appropriate endpoint attributable to a single endothall dose was not available from any study, including the prenatal developmental toxicity study in the rat or the mouse. Therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database DEEM-FCID(™), Version 2.03 which incorporates consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII).

Analyses were performed to support the use of endothall in irrigation canals with no holding period before the water may be used on crops. The resulting chronic exposure assessment for food is refined, using average residues from the field trials, and estimating residues in meat, milk, poultry and eggs (MMPE), and using average residues in the livestock feeds. The exposure estimate also includes an adjustment for the percent of the harvested crop that has been irrigated for some crops. Despite this refinement, the results remain very conservative for several reasons. First, the field residue trials were performed under highly conservative conditions. Second, the manner of taking percent of the crop irrigated into consideration was very conservative. For most commodities EPA assumed 100% of the crop would be irrigated. For the remaining crops, EPA used two different methods to estimate the percent of the crop that was irrigated. Where EPA had reliable data on the percent of a crop that is irrigated, EPA assumed that percentage of that crop is irrigated with endothall-treated water (i.e., assuming that 100% of irrigation water is treated

with endothall). Where EPA did not have adequate data on the percent of a crop that is irrigated, EPA assumed that all crops grown in the western U.S. are irrigated with endothall-treated water. Endothall is unlikely to be used in treatment of irrigation water outside of the western U.S. This is a very conservative assumption because all of the crops grown in the western U.S. are not irrigated.

The average residue values used in the dietary exposure assessment were taken from 18 sets of field trials submitted by IR-4. Processing factors were taken from the appropriate processing studies submitted with these field trials. Because this assessment needed to cover all possible crops that might be irrigated in the U.S., the appropriate crop residues and processing studies were translated within each extant crop group, and in addition appropriate residue values were translated to other orphan crops outside of those crop groups as needed. For similar reasons appropriate processing factors were sometimes translated to similarly processed commodities. DEEM default concentration factors were used for any applicable processed commodities where no applicable processing factors could reasonably be translated, but default factors did exist. For certain crops no formal default values have been established, so the processing factors for these crops were left at 1.0, to be consistent with other contemporary assessments.

iii. *Cancer*. Endothall is considered ''not likely to be carcinogenic to humans'' based on lack of evidence of carcinogenicity in mice and rat studies. Endothall showed no mutagenic potential based on results from *in vitro* mammalian cell gene mutation assay in Chinese hamster ovary (CHO) cells and bacterial gene mutation assay (*Salmonella typhimurium*). Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (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 as follows:

Apple, fresh market 78%, apple, processing 44%, apple, juice 49%, apple, canned 14%, barley 36%, corn 19%, dry edible beans 32%, grape, fresh market 99%, grape, processing 94%, green peas 11%, oats 7%, peanuts 42%, sorghum 15%, soybeans 9%, sugarbeets 37%, sugarcane 54%, strawberry, fresh market 89% and wheat 14%, and watermelon 39%.

EPA is establishing tolerances on multiple commodities to support the application of the aquatic herbicide endothall to be used in irrigation canals without a holding period. For a new agricultural pesticide use, EPA typically estimates PCT by comparison with the amount of use of other pesticides for the same crop or site. That approach is inappropriate for the new use for endothall, because the use is on irrigation canals rather than crops and EPA does not have data on the frequency of use of aquatic herbicides on irrigation canals.

Instead, EPA has estimated PCT for endothall by estimating the percent crop irrigated which serves as an upperbound for crops that may be exposed to endothall in irrigation water. EPA used two methods to estimate percent crop irrigated. The preferred method, used where reliable data on irrigated production are available, is an estimate of the share of total production that is irrigated. Estimates from this method are provided for barley, corn, dry edible beans, oats, peanuts, rice, sorghum, soybeans, sugarbeets, sugarcane, and wheat. Where data on irrigated production are not available, EPA estimated the percent crop irrigated by determining the percentage of U.S. production of a crop that is grown in 17 western states where endothall may be used. The 17 western states are Arizona, California, Colorado, Idaho , Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. These states are the states where large scale water projects predominate, and where other chemicals are used in canals for weed control. These types of irrigation projects are relatively rare in other parts of the country.

Use of these estimates in the exposure assessment is conservative, because it is the equivalent of assuming 100% of irrigated crops have irrigated with water from endothall-treated canals. In fact, even in areas with surface water delivery systems, all irrigation canals may not be treated with endothall. Additionally, some crops, even in the heavily irrigated areas of the West, are not irrigated, such as dryland grain production.

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 endothall may be applied in a particular area.

2. *Dietary exposure from drinking water*. The maximum potential exposure of endothall in drinking water sources is expected to result from the direct application of endothall to drinking water reservoirs to control aquatic

weeds. EPA assumed that the entire reservoir would be treated at the maximum rates, with no more than 10% of the reservoir treated at one time as stated on the label, so that 10 treatments were applied 7 days apart to treat the entire reservoir. Since the label specified that the community water system (CWS) could not supply treated drinking water unless the endothall residues were below 0.1 ppm (100 µg/L), EPA assumed 100 µg/L (0.1 ppm) as the acute (peak) exposure and the constant exposure during the treatment period and then modeled residue decline by degradation after the final treatment. This resulted in a chronic (annual average) concentration of 31 µg/L (0.031 ppm) for endothall. This represents the likely high-end chronic exposure from endothall from the use expected to generate the highest exposures (treatment of a reservoir).

Additional information on the drinking water exposure assessment can be found at *http://www.regulations.gov* in document entitled; ''Drinking Water Assessment for the IR-4 Tolerance Petition for the Use of Endothall-treated Irrigation Water on a Variety of Crops,'' dated 9/09/2009 in docket ID number EPA–HQ–OPP–2008–0730.

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).

Endothall is currently registered for the following uses that could result in residential exposures. There is a potential for exposure from registered uses in residential for homeowners who apply endothall products to control aquatic weeds and algae in ponds and garden pools. There is also a potential for exposure to adults and children from contacting water treated with endothall through swimming, wading, water skiing, etc. The Agency conducted risk assessments for both residential handler and post-application scenarios.

For residential handlers, exposure scenarios are only considered to be short-term in nature due to the episodic uses associated with homeowner products. In ponds and garden pools use patterns and under current product labeling, two likely residential exposure scenarios exist including; 1) loading/applying granules with a bellygrinder and 2) applying granules by hand. The quantitative exposure/risk assessment developed for residential handlers is based on these two scenarios.

In residential post-application scenarios, exposures to adults and children may be expected following applications of endothall to ponds and lakes. Only short-term exposures are expected since these scenarios are expected to be only episodic.

Of the possible post-application exposures, swimming in treated water is considered by EPA to be worse-case and is used as a surrogate for all other possible post-application exposures, such as wading, water skiing, etc. The Agency considered residential post-application exposure for different segments of the population using the Swimmer Exposure Assessment Model (SWIMODEL). Details on the SWIMODEL used in this assessment may be found at: *http://www.epa.gov/oppad001/swimodel.htm*.

Risks were calculated using the MOE approach, where a MOE of >100 is considered a level that does not pose a concern.

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 endothall to share a common mechanism of toxicity with any other substances, and endothall does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that endothall 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 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*. There is no quantitative or qualitative evidence of increased susceptibility following prenatal exposure to rats in the developmental toxicity study. Endothall does not cause prenatal toxicity following *in utero* exposure to rats nor prenatal or postnatal toxicity following exposures to rats for 2–generations reproduction studies. Due to high mortality observed in a range finding study in rabbits even at low doses, a developmental toxicity study in this species was not conducted (i.e., acute direct irritative effects of the chemical could interfere with developmental toxicity in this susceptible species). A developmental toxicity study in mice showed no evidence for enhanced susceptibility in this species.

EPA concluded that there is not a concern for prenatal and/or postnatal toxicity resulting from exposure to endothall in rats. In the developmental mouse study, there was severe maternal toxicity (i.e., greater than 30% mortality) at the highest dose tested; at this dose level, a slight increase in vertebral and rib malformations was observed in the offspring indicating that these effects were likely secondary to severe maternal toxicity.

3. *Conclusion*. For chronic and intermediate-term risk assessments, EPA is retaining an additional safety factor for the protection of infants and children because it is relying on a LOAEL in the 2–generation reproduction study in assessing the risk of endothall. For short-term risk assessments, EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. Based on the following factors, EPA has determined that an additional factor of 3X will be safe for infants and children for chronic and intermediate-term risk assessments and that a 1X factor will be safe for short-term risk assessments:

i. Despite the fact that a NOAEL was not identified in the 2–generation reproduction study for chronic and intermediate-term effects and EPA is relying on a LOAEL from that study, a 3X factor (as opposed to a 10X) was determined to be adequate because: The gastric lesions (most sensitive effect) are due to the direct irritant properties of endothall (i.e., portal effects) and not as a result of frank systemic toxicity;the severity of the lesions were minimal to mild; and there was no apparent dose-response for this effect.

Therefore, EPA is confident that the POD for chronic dietary and intermediate inhalation exposure risks will not underestimate risks following exposure to endothall. A NOAEL for short-term effects was identified in the 2–generation reproduction study and is being used as the POD for assessing short-term risks of endothall.

ii. The toxicity database for endothall is complete except for acute and subchronic neurotoxicity studies and immunotoxicity testing. Recent changes to 40 CFR part 158 make these studies (OPPTS Guideline 870.7800) required for pesticide registration; however, the available data for endothall do not show potential for neurotoxicity or immunotoxicity. Although neurotoxicity studies have not yet been submitted, there are no concerns for neurotoxicity. The EPA does not expect that these studies will demonstrate a potential neurotoxic effect that is more sensitive than direct local irritation (the most sensitive effect identified in the data base). The available acute subchronic and chronic studies showed no evidence of neurotoxicity. However, irritation was identified as the initial and most sensitive effect. In the absence of specific immunotoxicity studies, EPA has evaluated the available endothall toxicity database to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity. The available studies do not indicate potential immunotoxicity, and endothall does not belong to the class of compounds (e.g., the organotins, heavy metals, or halogenated aromatic hydrocarbons) that would be expected to be toxic to the immune system. Based on the available data, the required immunotoxicity study is not expected to provide a POD lower than that currently used (i.e., direct local irritation - the most sensitive effect) for overall risk assessments. Consequently, the EPA believes the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios and for evaluation of the requirements under the FQPA, and an additional database uncertainty factor does not need to be applied.

iii. There is no indication that endothall is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iv. There is no evidence that endothall results in increased susceptibility in *in utero* rats or mice in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

v. There are no residual uncertainties identified in the exposure databases. While the chronic dietary exposure estimates are refined (average field trial residues and adjustment of the percent of the harvested crop that has been irrigated) the results are very conservative because the field trials were performed under highly conservative conditions, and it was assumed that 100% of all irrigation canals in the U.S. are treated at the maximum rate for endothall. Further, it was assumed that this maximally treated water is applied to the crops on the day of harvest, and all consumers are chronically exposed to simultaneous inadvertent residues of endothall through all possible food and water sources. For most commodities EPA assumed 100% of the crop would be irrigated. For the remaining crops, EPA used two different methods to estimate the percent of the crop that was irrigated which were very conservative estimates. Therefore, the estimated dietary exposure (food and drinking water) will not underestimate the potential risks for infants and children. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to endothall in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by endothall.

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. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, endothall is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to endothall from food and water will utilize 84% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. The general U.S. population subgroup was exposed at a maximum of 32% of the cPAD.

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

Endothall is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to endothall.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs. For adults, estimated dietary exposures via food and drinking water were combined with inhalation exposures during application to a pond or lake and potential post-application exposures during swimming. For children, estimated dietary exposures via food and drinking water were combined with potential post-application exposures during swimming. The short term aggregate risk estimate (MOE) for adults is 290, and for children, it is 240. The LOC for short-term exposures is for MOEs < 100. Therefore, there are no short term aggregate (food + drinking water + residential) risk concerns for endothall.

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

Endothall is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for endothall.

5. *Aggregate cancer risk for U.S. population*. Endothall is considered not likely to be carcinogenic to humans. EPA does not expect endothall to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography (GC) with microcoulometric nitrogen detection) is listed as Method I in the Pesticide Analytical Manual (PAM, Volume II) for the determination of endothall residues (total common moiety) in plant commodities, with a limit of quantitation (LOQ) of 0.1 ppm. A second liquid chromatography/mass spectrometry(LC/MS) method (Method No. KP218R0) is also available for determining residues of endothall and its monomethyl ester in fish and in plant commodities. The LOQ is 0.05 ppm for fish, and range from 0.01–0.10 ppm for plant commodities.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits for endothall on plant or animal commodities.

C. Revisions to Petitioned-For Tolerances

The Agency revised the proposed tolerance levels for the following commodities: Almond, hulls from 10 to 15 ppm; animal feed, nongrass, group 18, forage from 3.5 to 4.0 ppm; animal feed, nongrass, group 18, hay from 8.0 to 10.0 ppm; fruit, stone, group 12 from 0.25 to 0.3 ppm; grain, aspirated fractions from 24.0 to 35.0 ppm; grain, cereal, group 15, except corn from 1.9 to 4.0 ppm; grape from 0.9 to 1.0 ppm; grass, forage, fodder, and hay group 17, forage from 3.0 to 3.5 ppm; grass, forage, fodder, and hay group 17, hay from 19.0 to 18.0 ppm; peppermint, tops from 7.0 to 5.0 ppm; spearmint, tops from 7.0 to 5.0 ppm; vegetable, bulb, group 3 at 2.0 to bulb, group 3-07 at 0.5 ppm; vegetable, cucurbit, group 9 from 1.1 to 1.5 ppm; vegetable, leafy, except brassica, group 4 from 3.5 to 2.0 ppm; vegetable, leaves of root and tuber, group 2 from 3.5 to 3.0 ppm; and vegetable, root and tuber, group 1 from 2.0 to 1.0 ppm. For proposed tolerances for cereal, forage, fodder and straw, group 16, stover at 11.0 ppm; and cereal, forage, fodder and straw, group 16, except stover at 6.0 ppm, the Agency established a single tolerance for both as ''grain, cereal, forage, fodder and straw, group 16'' at 10 ppm.

The Agency revised the tolerance levels based on available data on maximum endothall residues in subject crop and/or representative crop including analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data.

Using the same resources and procedures, the Agency established tolerances for the following additional commodities: Apple, wet pomace at 0.15 ppm; beet, sugar, molasses at1.5 ppm; cattle, fat at 0.01 ppm; cattle, kidney at 0.20 ppm; cattle, liver at 0.1; cattle, meat at 0.03 ppm; corn, field, grain at 0.07 ppm; corn, pop, grain at 0.07 ppm; egg at 0.05 ppm; feed commodities not otherwise listed at 10.0 ppm; food commodities not otherwise listed at 5.0 ppm; goat, fat at 0.005; goat, kidney at 0.15 ppm; goat, fat at 0.015 ppm; goat, liver at 0.05 ppm; goat meat at 0.015 ppm; grape, raisin at 5.0 ppm; herb and spice, group 19 at 5.0 ppm; hog, fat at 0.005; hog, liver at 0.05; hog, kidney at 0.10; hog, meat at .01 ppm; milk at 0.03 ppm; pea and bean, succulent shelled , subgroup 6B; pea and bean , dried shelled , subgroup, 6C at 0.2 ppm; poultry, fat at 0.015 ppm; poultry, liver at 0.05 ppm; poultry, meat byproducts at 0.20 ppm; poultry, meat at 0.015 ppm; rice, hull at 8.0 ppm; sheep, fat at 0.005 ppm; sheep, kidney at 0.15 ppm; sheep, liver 0.05; sheep, meat 0.015 ppm; soybean, hulls at 0.5 ppm; soybean, seed at 0.2 ppm; tomato, paste at 0.1 ppm; tomato, puree at 0.1 ppm; brassica, head and stem subgroup 5A at 0.1 ppm; brassica, leafy, group 5B at 2.0 ppm; vegetable, foliage of legume group 7 at 4.0 ppm; vegetable, legume, edible, podded, subgroup 6A; and wheat, milled byproducts at 5.0 ppm. Some of these tolerances are being added because processing data indicated that residues in the processed food may exceed the raw commodity tolerance (grape, raisin; wheat, milled byproducts). The other tolerances are being added because use of an aquatic herbicide such as endothall in irrigation water may theoretically result in residues in these crops. The available data support these tolerances.

EPA has also determined that individual tolerances are not necessary for certain petitioned-for commodities. Proposed tolerances for cereal, forage, fodder and straw, group 16, hay; cereal, forage, fodder and straw, group 16, straw; and cereal, forage, fodder and straw, group 16, forage are combined into forage, hay and straw and, therefore individual tolerances are not required. Proposed tolerances for rice, grain and rice, straw are not needed as these commodities are covered by the tolerances for cereal grains and cereal grain straw. The Agency rejected a proposed tolerance for vegetable, legume group 6 and established separate tolerances for soybeans and the various legume subgroups including vegetable, legume, edible podded, subgroups 6A; pea and bean, succulent shelled, subgroup 6B; and pea and bean, dried shelled, subgroup 6C. Likewise, tolerances were established for brassica, head and stem subgroup 5A and brassica, leafy, group 5B in place of a proposed tolerance for vegetable, brassica, group 5.

The Agency established a tolerance for cattle, fat; cattle meat; cattle liver and cattle kidney based upon calculations for dairy cattle using metabolism data even though no tolerance was proposed by IR-4 for cattle meat products. Tolerances were also established for cereal, forage, fodder and straw, group 16.

No tolerance was petitioned for on corn, field, grain or corn, pop, grain. However, a 0.7 ppm tolerance is established for each based on tolerance spreadsheet for corn grain. Also, a tolerance is established for corn, sweet, kernel plus cob with husks removed at 0.3 ppm based on maximum residues in sweet corn K+CWHR of 0.17 ppm based on available data.

Additionally, the Agency has determined that the tolerances should be established in § 180.293(d) for direct and inadvertant residues and the tolerance expression should read: Tolerances are established for the indirect or inadvertant combined residues of the herbicide, endothall (7 -oxabicyclo[2.2.1] heptane-2,3-dicarboxylic acid) in potable water from use of its potassium, sodium, di-*N, N* -dimethylalkylamine, and mono-*N-N*, -dimethylalkylamine salts.

V. Conclusion

Therefore, tolerances are established for the indirect or inadvertent combined residues of endothall (7-oxabicyclo[2.2.1] heptane-2,3-dicarboxylic acid) in water, potable from use of its potassium, sodium, di-*N,N*-dimethylalkylamine, and mono- *N-N*, -dimethylalkylamine salts as algacides or herbicides to control aquatic plants in canals, lakes, ponds, and other potable water sources that may lead to endothall residues in or on almond, hulls at 15.0 ppm; animal feed, nongrass, group 18, forage at 4.0 ppm;

animal feed, nongrass, group 18, hay at 10 ppm; apple, wet pomace at 0.15 ppm; beet, sugar at 1.5 ppm; bushberry subgroup 13-07B at 0.6 ppm; caneberry subgroup 13-07A at 0.6 ppm; cattle, fat at 0.01 ppm; cattle, kidney at 0.20 ppm; cattle, liver at 0.10 ppm; cattle, meat at 0. 03 ppm; grain, cereal, forage, fodder and straw, group 16 at 10.0 ppm; corn, field, grain at 0.07 ppm; corn, pop, grain at 0.07 ppm; corn, sweet, kernel plus cob with husks removed at 0.3 ppm; citrus, dried pulp at 0.1 ppm; egg at 0.05 ppm; feed commodities not otherwise listed at 10.0 ppm; food commodities not otherwise listed at 5.0 ppm; fruit, citrus group 10 at 0.05 ppm; fruit, pome, group 11 at 0. 05 ppm; fruit, stone, group 12 at 0.3 ppm; goat, fat at 0.005 ppm; goat, kidney at 0.15 ppm; goat, liver at 0.05 ppm; goat, meat at 0.015 ppm; grain, aspirated fractions at 35.0 ppm; grain, cereal, group 15, except corn at 35.0 ppm; grape at 1.0 ppm; grape, raisin at 5.0 ppm; grass, forage, fodder, and hay group 17, forage at 3.5 ppm; grass, forage, fodder, and hay group 17, hay at 18.0 ppm; herb and spice, group 19 at 5.0 ppm; hog, fat at 0.005 ppm; hog, liver at 0.05 ppm; hog, kidney at 0.10 ppm; hog, meat at 0.01 ppm; milk at 0.03 ppm; nut, tree, group 14 at 0.05 ppm; okra at 0.05 ppm; pea and bean, succulent shelled, subgroup 6B at 2.0 ppm; pea and bean, dried shelled, subgroup 6C at 0.2 ppm; peppermint, tops at 5.0 ppm; pistachio at 0. 05 ppm; poultry, fat at 0.015 ppm; poultry, liver at 0.05 ppm; poultry, meat byproducts at 0.28 ppm; poultry, meat at 0.15 ppm; rice, hull at 8.0 ppm; sheep, fat at 0.005 ppm; sheep, kidney at 0.15 ppm; sheep, liver at 0.05 ppm; sheep, meat at 0.015 ppm; soybean hulls at 0.5 ppm; soybean, seed at 0.2 ppm; tomato, paste at 0.1 ppm; tomato, puree at 0.1 ppm; brassica, head and stem subgroup 5A at 0.1 ppm; brassica, leafy, group 5B at 2.0 ppm; vegetable, bulb, group 3-07 at 0.5 ppm; vegetable, cucurbit, group 9 at 1.5 ppm; vegetable, foliage of legume, group 7 at 4.0 ppm; vegetable, fruiting, group 8 at 0. 05 ppm; vegetable, leafy, except brassica, group 4 at 2.0 ppm; vegetable, leaves of root and tuber, group 2 at 3.0 ppm; vegetable, legume, edible, podded, subgroup 6A at 2.0 ppm; vegetable, root and tuber, group 1 at 1.0 ppm; and wheat, milled byproduct at 5.0 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: December 11, 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.

■ 2. Section 180.293 is amended by revising paragraph (d) to read as follows:

§ 180.293 Endothall; Tolerances for residues.

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent combined residues of the herbicide, endothall (7 -oxabicyclo[2.2.1] heptane-2,3-dicarboxylic acid) in potable water from use of its potassium, sodium, di-*N, N* -dimethylalkylamine, and mono- *N-N,* -dimethylalkylamine salts as algicides or herbicides to control aquatic plants in canals, lakes, ponds, and other potable water sources that may lead to endothall residues in or on the following commodities:

Commodity	Parts per million
Almond, hulls	15.0
Animal feed, nongrass, group 18, forage	4.0
Animal feed, nongrass, group 18, hay	10
Apple, wet pomace	0.15

Commodity	Parts per million
Beet, sugar, molasses	1.5
Brassica, head and stem subgroup 5A	0.1
Brassica, leafy, subgroup 5B	2.0
Bushberry subgroup 13-07B	0.6
Caneberry subgroup 13-07A	0.6
Cattle, fat	0.01
Cattle, kidney	0.20
Cattle, liver	0.10
Cattle, meat	0.03
Corn, field, grain	0.07
Corn, pop, grain	0.07
Corn, sweet, kernel plus cob with husks removed	0.3
Citrus, dried pulp	0.1
Egg	0.05
Feed commodities not otherwise listed	10.0
Food commodities not otherwise listed	5.0
Fruit, citrus group 10	0.05
Fruit, pome, group 11	0.05
Fruit, stone, group 12	0.3
Goat, fat	0.005
Goat, kidney	0.15
Goat, liver	0.05
Goat, meat	0.015
Grain, aspirated fractions	35.0
Grain cereal, forage, fodder and straw, group 16	10.0
Grain, cereal, group 15, except corn	4.0
Grape	1.0
Grape, raisin	5.0
Grass, forage, fodder, and hay group 17, forage	3.5
Grass, forage, fodder, and hay group 17, hay	18.0
Herb and spice, group 19	5.0
Hog, fat	0.005
Hog, liver	0.05
Hog, kidney	0.10
Hog, meat	0.01
Milk	0.03
Nut, tree, group 14	0.05
Okra	0.05
Pea and bean, succulent shelled, subgroup 6B	2.0
Pea and bean, dried shelled, subgroup 6C	0.2
Peppermint, tops	5.0
Pistachio	0.05
Poultry, fat	0.015
Poultry, liver	0.05
Poultry, meat byproducts	0.20
Poultry, meat	0.015
Rice, hulls	8.0
Sheep, fat	0.005
Sheep, kidney	0.15
Sheep, liver	0.05
Sheep, meat	0.015
Soybean, hulls	0.5
Soybean, seed	0.2
Spearmint, tops	5.0
Tomato, paste	0.1
Tomato, puree	0.1
Vegetable, bulb, group 3-07	0.5
Vegetable, cucurbit, group 9	1.5
Vegetable, foliage of legume, group 7	4.0
Vegetable, fruiting, group 8	0.05
Vegetable, leafy, except brassica, group 4	2.0
Vegetable, leaves of root and tuber, group 2	3.0
Vegetable, legume, edible, podded, subgroup 6A	2.0
Vegetable, root and tuber, group 1	1.0
Wheat, milled byproducts	5.0

[FR Doc. E9–30150 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0013; FRL–8803–1]

Dinotefuran; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of dinotefuran in or on *Brassica*, leafy greens, subgroup 5B and turnip, greens. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2009–0013. 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: Sidney Jackson, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7610; e-mail address: *jackson.sidney@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?

You may 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–2009–0013 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 February 16, 2010.

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–2009–0013, 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. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), 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 8E7433) by IR-4, IR-4 Project Headquarters, 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.603 be amended by establishing tolerances for combined residues of the insecticide dinotefuran, (*RS*)-1-methyl-2-nitro-3-((tetrahydro-3-furanyl)methyl)guanidine and its major metabolites DN, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and UF, 1-methyl-3-(tetrahydro-3-furylmethyl)-urea, expressed as dinotefuran in or on *Brassica*, leafy greens, subgroup 5B at 17 parts per million (ppm) and turnip, greens at 17.0 ppm. That notice referenced a summary of the petition prepared by Valent USA Corporation and Mitsui Chemical Inc., the registrants on behalf of IR-4, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance of 17.0 ppm for both *Brassica*, leafy greens, subgroup 5B, and turnip, greens to 15.0 ppm. The reason for these changes are explained in Unit IV.C.

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 dinotefuran in or on *Brassica*, leafy greens, subgroup 5B at 15.0 ppm and turnip, greens at 15.0 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 their 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.

Dinotefuran has low acute toxicity by oral, dermal, and inhalation exposure routes. It is not a dermal sensitizer, but causes a low level of skin irritation. The main target tissues are the nervous system and the immune system, with effects seen in several species. Nervous system toxicity is manifested as clinical signs and decreased motor activity seen after acute dosing (in both rats and rabbits) and increased motor activity seen after repeated dosing; these findings are consistent with effects on the nicotinic cholinergic nervous system. Immune system toxicity is manifested as decreases in spleen and thymus weights, seen in multiple studies and species (including dogs, rats, and mice). There are also indications of endocrine-related toxicity, manifested in the reproductive toxicity study (in rats) as decreases in primordial follicles and altered cyclicity in females, and abnormal sperm parameters in males at the Limit Dose; changes in testes or ovary weight were also seen in several species (mouse, dog, and rat).

No adverse effects in fetuses were seen in the developmental toxicity studies in rats or rabbits, at maternally toxic doses, and offspring effects in the reproduction study occurred at the same doses causing parental effects. Acceptable oncogenicity and mutagenicity studies provide no indication that dinotefuran is carcinogenic or mutagenic.

Review of available studies including developmental toxicity studies in rats and rabbits, a reproductive toxicity study in rats, and acute and subchronic neurotoxicity studies in rats led to the conclusions that there is low concern for prenatal and/or postnatal toxicity resulting from exposure to dinotefuran. However, there is a concern for neurotoxicity and developmental neurotoxicity resulting from exposure to dinotefuran. Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for dinotefuran, the degree of concern for the effects observed in the rat reproduction study is characterized as low, noting these effects occurred in the presence of parental toxicity and only at the highest dose tested. For all toxicity endpoints established for dinotefuran, a NOAEL lower than this offspring NOAEL is used. No residual uncertainties were identified.

Specific information on the studies received and the nature of the adverse effects caused by dinotefuran 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 the document ''Dinotefuran: Human Health Risk

Assessment for Proposed Uses on *Brassica* Leafy Vegetables Subgroup 5B and Turnip Greens,'' dated August 6, 2009, page 11 in docket ID number EPA–HQ–OPP–2009–0013–0004.

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*.

A summary of the toxicological endpoints for dinotefuran used for human risk assessment can be found at *http://www.regulations.gov* in document ''Dinotefuran: Human Health Risk Assessment for Proposed Uses on *Brassica* Leafy Vegetables Subgroup 5B and Turnip Greens,'' dated August 6, 2009, page 14 in docket ID number EPA–HQ–OPP–2009–0013–0004.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to dinotefuran, EPA considered exposure under the petitioned-for tolerances as well as all existing dinotefuran tolerances in 40 CFR 180.603. EPA assessed dietary exposures from dinotefuran 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 U.S. 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 100 percent crop treated (PCT) and tolerance level residues of dinotefuran.

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 assumed 100 PCT and tolerance level residues of dinotefuran in all registered raw agricultural commodity uses.

iii. *Cancer*. Dinotefuran is classified as ''not likely to be a carcinogen'' based on the absence of significant tumor increases in two acceptable rodent carcinogenicity studies. Therefore, no exposure assessment for quantifying cancer risk was performed.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for dinotefuran. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

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

The Agency has determined that it is appropriate to estimate for parent dinotefuran and its metabolites/degradates MNG, DN, UF, and DN-2-OH + DN-3-OH in drinking water.

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of dinotefuran and its metabolites for acute exposures are estimated to be 75.78 parts per billion (ppb) for surface water and 2.75 ppb for ground water.

For chronic exposures, non-cancer assessments are estimated to be 20.97 ppb for surface water and 2.75 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 75.78 ppb was used to assess the contribution to drinking water.

For chronic dietary risk assessment, the water concentration value of 20.97 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).

Dinotefuran is currently registered for the following uses that could result in residential exposures: Professional turf management, professional ornamental production, and residential lawns. The risk assessment was conducted using the following residential exposure assumptions: Outdoor uses for turf farms, golf courses, residential lawns, and ornamentals.

There is a potential for short-term and intermediate-term exposures to homeowners in residential settings during the application of pesticide products containing dinotefuran. There is also a potential for exposure from entering areas previously treated with dinotefuran such as lawns where children might play, or golf courses and home gardens that could lead to exposures for adults (gardens) or adults and youth (golf).

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 dinotefuran to share a common mechanism of toxicity with any other substances, and dinotefuran does not appear to produce a toxic metabolite produced by other substances. For the purposes of this

tolerance action, therefore, EPA has assumed that dinotefuran 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 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*. Prenatal developmental toxicity studies in rats and rabbits provided no indication of increased susceptibility (qualitative or quantitative) following *in utero* exposure to dinotefuran. In the 2–generation reproduction study in the rat there was evidence of increased qualitative susceptibility in the offspring. However, the level of concern for the observed susceptibility (decreased body weight, decreased thymus weight, and decreased grip strength) is low because:

i. Clear NOAELs and LOAELS are established for the endpoints of concern for parental and offspring toxicity.

ii. The effects in the offspring were seen in the presence of parental toxicity.

iii. The effects were seen only at the highest dose tested (Limit Dose of 1,000 milligrams/kilograms/day (mg/kg/day).

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF was reduced to 1X for acute exposure, however, a safety factor of 10X has been retained for assessing chronic dietary and short- and intermediate-term inhalation exposure due to a lack of a NOAEL in the chronic dietary (dog) and 28–day inhalation toxicity studies. That decision is based on the following findings:

i. The toxicity database for dinotefuran is complete except for developmental neurotoxicity testing. The Agency has available a newly submitted dose-range finding developmental neurotoxicity and immunotoxicity study on dinotefuran in rats. Under the conditions of the study, dinotefuran did not affect the distribution of splenocyte subpopulations (total B cell, total T cells, helper/DTH T cells, cytotoxic T cells, and natural killer cells) in the weanlings of F_1 generation. It did not affect the anti-SRBC antibody forming cell response (humoral immunity) and NK cell activity (innate immunity). Therefore, it was concluded that dinotefuran showed no evidence of an effect on the functionality of the immune system in rats that were exposed to dinotefuran during the prenatal, postnatal, and post-weaning periods. Although, this study was a dose-range-finding study for a developmental immunotoxicity study, it examined all the parameters which would have been required in a regular developmental immunotoxicity study and the highest tested dose (1,035 mg/kg) was slightly greater than the limit dose (1,000 mg/kg). Considering the results and conduct of the study, EPA believes that this range-finding study provides sufficient data for understanding the immunotoxic potential of dinotefuran in young animals and satisfies the data requirement for a developmental immunotoxicity study. With respect to the requirement for an adult immunotoxicity study, the Agency has analyzed the entire data base of dinotefuran and that of a structurally related chemical, clothianidin. Clothianidin was found to produce similar effects on the thymus and spleen as dinotefuran in the repeated dosing studies, and an immunotoxicity study was conducted in both adult and the offspring animals. No immunotoxicity was found in either the adults or the offspring treated with clothianidin. Based on the available information, EPA believes that conducting an immunotoxicity study in adult rats would probably not provide additional information on the immunotoxicity of dinotefuran and certainly would not impact the risk assessment of this pesticide.

ii. There is concern for developmental neurotoxicity following exposure to dinotefuran, and a developmental neurotoxicity (DNT) study in rats is required. Evidence of neurotoxicity in the dinotefuran data base includes changes in motor activity observed in acute and subchronic neurotoxicity studies, decreased grip strength in adult offspring in the 2–generation rat study and maternal clinical signs (prone position and tremor) in the rabbit developmental study. These effects occurred at doses ranging from approximately 300 to 1,500 mg/kg/day. Because of a concern for these neurotoxic effects, EPA required a DNT study to determine possible effects on the nervous system in the developing young. However, the Agency determined that a database uncertainty factor (UF_{DB}) is not needed to account for the lack of the DNT study based on the following:

- The developmental neurotoxicity data for other neonicotinoid compounds (thiacloprid, imidacloprid and clothainadin) where neurotoxicity (in the presence of decreased pup body weight) was seen in only one compound (imidacloprid). Based on these data EPA concluded that the results of the required dinotefuran DNT study would not likely impact the regulatory doses selected for dinotefuran.
- No concerns for developmental neurotoxicity were seen in the range-finding DNT study for dinotefuran where the offspring LOAEL was the Limit Dose (1,035 mg/kg/day) based on decreased body weight and the offspring NOAEL was 317 mg/kg/day. Establishment of such a high LOAEL in the range-finding study clearly indicates that in order to elicit toxicity, dose selection for the definitive DNT study will likely result in a point of departure much higher than those currently used for overall risk assessment (range from 2.0 to 125 mg/kg/day).

In the current risk assessment, a point of departure for neurotoxicity was used in two risk assessment scenarios: (1) A NOAEL of 125 mg/kg/day was used for general population acute dietary risk based on transient clinical signs (prone position, tremor, erythema) seen at 300 mg/kg/day (LOAEL) following a single dose and no longer apparent after 24 hours; (2) a NOAEL of 33 mg/kg/day was used for short-term incidential oral risk based on increased motor activity seen at 327 mg/kg/day following multiple doses. Similar or lower points of departure for other systemic toxicities were used for the other risk assessment scenarios: The NOAEL of 33 mg/kg/day, which was used for assessment of short-term incidental oral risk, the chronic RfD is based on an extrapolated NOAEL of 2.0 mg/kg/day based on decreased thymus weight, the intermediate term incidental oral exposure is based on a NOAEL of 22 mg/kg/day based on changes in body weight/body weight gain, and the short and the intermediate inhalation exposure endpoints are based on an extrapolated NOAEL of 6.0 mg/

kg/day based on decreased body weight and food consumption.

Therefore, the Agency believes there are reliable toxicity data showing that the points of departures used for the overall risk assessment of dinotefuran are protective of infants and children.

iii. There is no evidence that dinotefuran results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies. Although there is evidence of increased qualitative susceptibility in the two generation reproduction study in the rat, the degree of concern is low and the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of dinotefuran.

iv. A safety factor of 10X has been retained for chronic dietary and short- and intermediate-term inhalation exposure due to a lack of a NOAEL in the chronic dietary (dog) and 28–day inhalation toxicity studies. For the chronic Reference Dose (RfD) the default 10X UF was deemed to be adequate based on the magnitude and the nature of response at the LOAEL in the study: (1) At the LOAEL, the decreased thymus weight was limited to one sex (males) with no corroborative histopathological lesions in the thymus glands; (2) this appears to be a species specific effect since no treatment-related effects on the thymus (weight or histopathology) was seen following chronic exposures to mice or rats; and (3) there is high confidence that the extrapolated NOAEL of 2.0 mg/kg/day (LOAEL = 20 ÷ 10; UF = 2.0) will be protective of the systemic toxicity seen at higher doses in mice (LOAEL = 34 mg/kg/day) and rats (LOAEL = 991 mg/kg/day) following chronic exposures.

For the short- and intermediate-term inhalation exposures, the default 10X UF is deemed to be adequate since following exposures for 28–days, no toxicity to the target organ (respiratory system) was seen at any concentration; and the endpoint of concern was generalized systemic toxicity characterized by decreased body weight gain and food consumption in one sex (males).

v. There are no residual uncertainties identified in the exposure databases. The acute and chronic dietary food exposure assessment utilized proposed and registered tolerance level residues and 100% crop treated information for all commodities. By using these screening-level assessments, acute and chronic exposure/risks will not be underestimated. Furthermore, EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to dinotefuran in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by dinotefuran.

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-, intermediate-, 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, the acute dietary exposure from food and water to dinotefuran will occupy 3.5% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to dinotefuran from food and water will utilize 68% of the cPAD for children 1 to 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 dinotefuran is not expected.

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

Dinotefuran is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to dinotefuran. Because there are existing residential uses of dinotefuran, short- and intermediate-term aggregate risk assessments based on exposure from oral, inhalation, and dermal routes were considered. However, the toxicological effects for oral and inhalation routes of exposure are different (i.e., neurotoxicity for oral and decrease in body weight for inhalation); and therefore, these exposure scenarios have not been combined. Also, because no systemic toxicity was seen at the limit dose in a 28–day dermal toxicity study, no quantification of short-term dermal risk is required. Therefore, only short-term oral residential hand-to-mouth exposures for toddlers need to be aggregated with chronic food and drinking water exposures. However, these exposures were not aggregated, and instead as a worst-case estimate of risk, intermediate-term dermal and oral residential hand-to-mouth exposures for toddlers were aggregated with chronic food and drinking water exposures. The point of departure for intermediate-term dermal and oral exposures is a NOAEL of 22 mg/kg/day versus the point of departure for short-term oral exposures which is 33 mg/kg/day.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term aggregate risk assessment was performed as a screening level assessment. Intermediate-term aggregate risk assessments were performed for adults and children. For children, the subgroup with the highest estimated chronic dietary exposure (children 1 to 2 years old) was aggregated with residential exposures to children playing on treated lawns (dermal and oral hand-to-mouth exposures) in order to calculate the worst case intermediate-term aggregate risk to children. Intermediate term is a worst case because the short- and intermediate-term incidental oral exposures are the same and the POD for intermediate-term risk is lower than the POD for short term risk. Further, intermediate dermal plus incidental oral exposures are combined (same toxic effect), thus the total intermediate-term exposure is higher than short term exposure.The reciprocal MOE method was used to conduct the intermediate-term aggregate risk assessment for children, since the levels of concern are identical for all MOEs in the calculation. For adults, the aggregate risk index (ARI) method was used, since levels of concern are not identical for all types of exposure in the calculation. For children, the aggregate MOE is 430. Because the level of concern is for

exposures with a MOE of less than 100, this MOE does not raise a safety concern. For adults, the total aggregate ARI is 5.9. Because the level of concern using the ARI approach is with an ARI of less than 1, the total aggregate ARI for dinotefuran does not raise a safety concern.

5. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenic effects in two acceptable carcinogenicity studies, dinotefuran was classified as ''not likely to be carcinogenic to humans'' and is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Three methods for plants have been available for enforcement of tolerances: A high performnce liquid chromatography mass spectrometry (HPLC/MS/MS) method for the determination of residues of dinotefuran, DN, and UF; a HPLC/UV method for the determination of dinotefuran; and a HPLC/MS and HPLC/MS/MS method for the determination of DN and UF. An additional LC/MS/MS method was developed by Wildlife International, Ltd. (Project No. 236C–113), entitled ''Laboratory Validation of Method(s) for the Analysis of MTI-446 and its metabolites DN and UF in Multiple Crop Substrates,'' to quantitate residues in mustard greens. The method was validated using untreated mustard greens fortified separately with dinotefuran, DN and UF at 0.01 for each analyte. Adequate recovery data were provided. Based on the method validation data and concurrent recovery data, the submitted LC/MS/MS method for leafy *Brassica* greens is adequate for enforcement and data collection purposes.

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

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican maximum residue limits for residues of dinotefuran in or on plant commodities.

C. Revisions to Petitioned-For Tolerances

EPA has revised the tolerance levels for residues of dinotefuran from the, proposed 17 ppm for both *Brassica*, leafy greens, subgroup 5B and turnip greens to 15 ppm each based on analysis of field trial data and the North American Free Trade Agreement (NAFTA) MRL Spreadsheet.

Additionally, EPA has revised the tolerance expression to clarify, (1) that, as provided in section 408(a)(3) of FFDCA, the tolerance covers metabolites and degradates of dinotefuran 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. These changes were made to both the tolerance expressions for plant commodities and animal commodities. They result in no substantive change to the meaning of the tolerance but clarify the existing language.

V. Conclusion

Therefore, tolerances are established for residues of dinotefuran, (*RS*)-1-methyl-2-nitro-3-((tetrahydro-3-furanyl)methyl)guanidine, including its metabolites and degradates, in or on the commodities listed below in § 180.603. Compliance with the tolerance levels specified is to be determined by measuring only the sum of dinotefuran and its metabolites DN, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and UF, 1-methyl-3-(tetrahydro-3-furylmethyl)urea, calculated as the stoichiometric equivalent of dinotefuran, in or on *Brassica*, leafy greens, subgroup 5B at 15.0 ppm and turnip, greens at 15.0 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) (Pub. L. 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: December 10, 2009.

G. Jeffrey Herndon,

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.

■ 2. Section 180.603 is amended by revising the introductory text in paragraphs (a)(1) and (2); and alphabetically adding ''*Brassica*, leafy greens subgroup 5B'' and ''Turnip, greens'' to the table in paragraph (a)(1) to read as follows:

§ 180.603 Dinotefuran; tolerances for residues.

(a) * * * (1) Tolerances are established for residues of dinotefuran, (*RS*)-1-methyl-2-nitro-3-((tetrahydro-3-furanyl)methyl)guanidine, including its metabolites and degradates, in or on the commodities listed in the following table. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of dinotefuran and its metabolites DN, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and UF, 1-methyl-3-(tetrahydro-3-furylmethyl)urea, calculated as the stoichiometric equivalent of dinotefuran, in or on the commodities listed in the table below:

Commodity	Parts per million
* * *	* *
Brassica, leafy greens, subgroup 5B	15.0
* * *	* *
Turnip, greens	15.0
* * *	* *

(2) Tolerances are established for residues of dinotefuran, (*RS*)-1-methyl-2-nitro-3-((tetrahydro-3-furanyl)methyl)guanidine, including its metabolites and degradates, in or on the commodities listed in the following table. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of dinotefuran, (*RS*)-1-methyl-2-nitro-3-((tetrahydro-3-furanyl)methyl)guanidine in or on the commodities listed in the table below:

* * * * *

[FR Doc. E9–30131 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0773; FRL–8801–8]

Prometryn; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for the residues of prometryn in or on celeriac, roots; celeriac, tops; cilantro, leaves; coriander, dried leaves; leaf petioles subgroup 4B; okra; parsley, leaves; parsley, dried leaves; and increases the tolerance level for carrot, root. Additionally, the tolerance for celery is removed since it is included in the leafy petioles subgroup 4B and the regional tolerance for parsley leaves is removed since it is superseded by the tolerance established in this action. Interregional Research Project No. 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2008–0773. 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: Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-6463; e-mail address: *madden.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- 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*. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to http://

www.epa.gov/oppts and select ''Test Methods & Guidelines'' on the left-side navigation menu.

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–2008–0773 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 February 16, 2010.

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–2008–0773, 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. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73640) (FRL–8390–4), 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 8E7434 and 8E7436) by IR-4, 500 College Road East, Suite 201W, Princeton, New Jersey 08540. The petition requested that 40 CFR 180.222 be amended by establishing tolerances for residues of the herbicide prometryn, 2,4-bis(isopropylamino)-6-methylthio-s-triazine, in or on carrots at 0.7 parts per million (ppm); celeriac, roots at 0.05 ppm; celeriac, tops at 0.05 ppm; cilantro, fresh at 4.0 ppm, cilantro, dried at 15 ppm; okra at 0.05 ppm; parsley, leaves at 0.7 ppm, (all the preceding in PP 8E7434); and leaf petiole subgroup 4B at 0.5 ppm (PP 8E7436). That notice referenced a summary of the petition prepared by Syngenta Crop Protection, Inc., the registrant, on behalf of IR-4, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified carrot, roots from 0.7 ppm to 0.45 ppm; celeriac, tops from 0.05 ppm to 0.20 ppm; cilantro, leaves from 4.0 ppm to 3.5 ppm; coriander, dried leaves from 15.0 ppm to 9.0 ppm; parsley, leaves from 0.7 ppm to 0.60 ppm. EPA also revised several commodity terms and determined that a tolerance is required for parsley, dried leaves at 1.5 ppm.The reasons for these changes are explained in Unit IV.C.

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 residues of prometryn on carrot, roots at 0.45 ppm; celeriac, roots at 0.05 ppm; celeriac, tops at 0.20 ppm; cilantro, leaves at 3.5 ppm; coriander, dried leaves at 9.0 ppm; leaf petioles subgroup 4B at 0.50 ppm; okra at 0.05 ppm; parsley, leaves at 0.60 ppm; and parsley, dried leaves at 1.5 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.

Prometryn demonstrated minimal acute toxicity via the oral, dermal, and inhalation routes. Prometryn is mildly irritating to the eyes, slightly irritating to the skin, and is not a skin sensitizer.

In a 28–day feeding study in mice, prometryn caused decreased body weight and/or mortality at doses that exceed the limit dose. No evidence of local or systemic toxicity was observed in a 21–day dermal toxicity study in rabbits. In a chronic oncogenicity study in mice, decreased body-weight gain at the highest dose tested was the only adverse effect observed. In a combined chronic toxicity/carcinogenicity study in rats, decreased body weight, body-weight gains, and renal toxicity (mineralized concretions) were observed at the highest dose only. There was no evidence of carcinogenicity in either study and prometryn was non-mutagenic when tested in a battery of genotoxicity assays. Following long-term exposure of dogs to prometryn, multi-organ toxicity (degenerative hepatic changes, renal tubule degeneration, bone marrow atrophy) was observed at the highest dose tested.

Prometryn is neither a developmental nor a reproductive toxicant. Adverse effects were observed primarily at the highest doses tested; offspring toxicity was observed at the same doses as maternal/parental toxicity. In the developmental toxicity study in the rat, decreased body weight and food consumption, and clinical signs of toxicity were observed in dams; decreased fetal body weight, and incomplete ossification of sternebrae and metacarpals were observed at the same dose in offspring. In the developmental toxicity study in rabbits, decreased food consumption and increased incidence of resorptions, abortions, and post-implantation loss were observed in maternal animals that

led to a decreased number of viable litters and live fetuses at the highest dose tested. In the 2-generation rat production study, decreased food consumption, body weight, and body-weight gain were observed in parental animals, and decreased body weight was observed in offspring at the same dose. There was no evidence of toxicity to the reproductive organs in the study.

Specific information on the studies received and the nature of the adverse effects caused by prometryn 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 the document ''Section 3 Registration Request to Add New Uses on Carrot, Celeriac, Cilantro, Okra, Parsley, and Leaf Petioles (Crop Subgroup 4B). Human–Health Risk Assessment,'' at page 36 in docket ID number EPA–HQ–OPP–2008–0773.

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*.

A summary of the toxicological endpoints for prometryn used for human risk assessment can be found at *http://www.regulations.gov* in the document ''Section 3 Registration Request to Add New Uses on Carrot, Celeriac, Cilantro, Okra, Parsley, and Leaf Petioles (Crop Subgroup 4B). Human–Health Risk Assessment,'' at page 19 in docket ID number EPA–HQ–OPP–2008–0773.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to prometryn, EPA considered exposure under the petitioned-for tolerances as well as all existing prometryn tolerances in 40 CFR 180.222. EPA assessed dietary exposures from prometryn 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. Such effects (increased incidence of resorptions, abortions, and post-implantation loss and decreased number of live fetuses) were identified in the toxicological studies for prometryn for the population subgroup females 13 to 49 years old; no such effects were identified for the general population or other population subgroups.

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that all food commodities contain tolerance level residues and that 100% of all crops are treated with prometryn. EPA also used the default processing factors for all processed commodities.

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 assumed that all food commodities contain tolerance level residues and that 100% of all crops are treated with prometryn. EPA also used the default processing factors for all processed commodities.

iii. *Cancer*. Prometryn was classified by the Agency in Group E (''Evidence of non-carcinogenicity for humans''), based on the lack of oncogenic effects at any dose in both rats and mice. Therefore an exposure assessment to evaluate cancer risks is not needed for this chemical.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for prometryn. Tolerance level residues and 100% CT were assumed for all food commodities.

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

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of prometryn for acute exposures are estimated to be 377.4 parts per billion (ppb) for surface water and 23.2 ppb for ground water. For chronic exposures for non-cancer assessments are estimated to be 157.9 ppb for surface water and 23.2 ppb for ground water.

For acute dietary risk assessment, the water concentration value of 377.4 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 157.9 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).

Prometryn is not registered for any specific use patterns that would result in residential exposure.

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 prometryn to share a common mechanism of toxicity with any other substances, and prometryn does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that prometryn 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 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*. Developmental toxicity studies showed no increased sensitivity of fetuses when compared to maternal animals following *in utero* exposures of rats or rabbits. The multi-generation reproduction study in rats showed no increased sensitivity of offspring when compared to parental animals. No evidence of developmental anomalies of the fetal nervous system was observed in the prenatal developmental toxicity studies in either rats or rabbits up to maternally toxic dose levels.

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 1X. That decision is based on the following findings:

i. The toxicity database for prometryn is complete except for acute and subchronic neurotoxicity studies and immunotoxicity testing. Recent changes to 40 CFR part 158 make these studies (OPPTS Guideline 870.7800) required for pesticide registration; however, the toxicology database for prometryn does not show any evidence of treatment-related effects on the nervous or immune system. The overall weight-of-evidence suggests that this chemical does not directly target the nervous or the immune system. In addition, prometryn does not belong to a class of chemicals (e.g., the organotins, heavy metals, halogenated aromatic hydrocarbons) that would be expected to be immunotoxic. Although an immunotoxicity study and acute and subchronic neurotoxicity studies are required as a part of new data requirements in the 40 CFR part 158 for conventional pesticide registration, the Agency does not believe that conducting a functional immunotoxicity study or acute and subchronic neurotoxicity studies will result in a lower POD than that currently use for overall risk assessment, and therefore, a database uncertainty factor is not needed to account for lack of these studies.

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

iii. There is no evidence that prometryn 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.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to prometryn in drinking water. These assessments will not underestimate the exposure and risks posed by prometryn.

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-, intermediate-, 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*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to prometryn will occupy 16% of the aPAD for females 13 to 49 years old, the population group receiving the greatest exposure. No adverse effect resulting from a single-oral exposure was identified for the remaining population groups and no acute dietary endpoint was selected. Therefore, prometryn is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to prometryn from food and water will utilize 30% of the cPAD for all infants < 1 year old, the population group receiving the greatest exposure. There are no residential uses for prometryn.

3. *Short- and intermediate-term risk*. Short- 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).

Prometryn is not registered for any use patterns that would result in residential exposure. Therefore, the short- and intermediate-term aggregate risk is the sum of the risk from exposure to prometryn through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. As discussed in Unit III.C.1.iii., the Agency has concluded that prometryn is not likely to be carcinogenic to humans, therefore, a cancer risk is not of concern for this chemical.

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 prometryn residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/flame photometric detection/sulfur (GC/FPD/S)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex MRLs for prometryn.

C. Revisions to Petitioned-for Tolerances

Based upon review of the data supporting the petition, EPA has

modified carrot, roots from 0.7 ppm to 0.45 ppm; celeriac, tops from 0.05 ppm to 0.20 ppm; cilantro, leaves from 4.0 ppm to 3.5 ppm; coriander, dried leaves from 15.0 ppm to 9.0 ppm; parsley, leaves from 0.7 ppm to 0.60 ppm. EPA revised these tolerance levels based on analysis of the residue field trial data using the Agency's tolerance spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data. EPA also revised the commodity term for cilantro dried to coriander, dried leaves, to be in compliance with correct commodity definition. Additionally, EPA determined that a tolerance is required for parsley, dried leaves at 1.5 ppm. Additionally, the tolerance for celery is removed since it is included in the leaf petioles subgroup 4B and the regional tolerance for parsley leaves is removed since it is superseded by the tolerance established in this action.

V. Conclusion

Therefore, tolerances are established for residues of prometryn, 2,4-bis(isopropylamino)-6-methylthio-s-triazine, in or on celeriac, roots at 0.05 ppm; celeriac, tops at 0.20 ppm; cilantro, leaves at 3.5 ppm; coriander, dried leaves at 9.0 ppm; leaf petioles subgroup 4B at 0.50 ppm; okra at 0.05 ppm; parsley, leaves at 0.60 ppm; parsley, dried leaves at 1.5 ppm and increases the tolerance level for carrot, root to 0.45 ppm. Additionally, the tolerance for celery is removed since it is included in the leafy petioles subgroup 4B and the regional tolerance for parsley leaves is removed since it is superseded by the tolerance established in this action.

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: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.222, in the table to paragraph (a) by revising the entry for ''carrot, roots''; by removing footnote 1, and the entry for ''celery,'' and by adding alphabetically entries for ''celeriac, roots''; ''celeriac, tops''; ''cilantro, leaves''; ''coriander, dried leaves''; ''leaf petioles subgroup 4B''; ''okra''; ''parsley, leaves''; and ''parsley, dried leaves'' to read as follows, and in the table to paragraph (c) by removing the entry for ''parsley, leaves.''

§ 180.222 Prometryn; tolerances for residues.

(a) * * *

Commodity	Parts per million
Carrot, roots	0.45
Celeriac, roots	0.05
Celeriac, tops	0.20
Cilantro, leaves	3.5
Coriander, dried leaves	9.0
* * *	* *
Leaf petioles subgroup 4B	0.50
Okra	0.05
Parsley, dried leaves	1.5
Parsley, leaves	0.60
* * *	* *

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[FR Doc. E9–30040 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0704; FRL–8803–4]

Fluoxastrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of fluoxastrobin and its Z isomer in or on berry, low growing, subgroup 13-07G; corn, field, grain; corn, field, forage; corn, field, stover; soybean, forage; soybean, hay; soybean, hulls; soybean, seed; and aspirated grain fractions. Arysta LifeScience North America, LLC requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2008–0704. 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: John Bazuin, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7381; e-mail address: *bazuin.john@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*. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select ''Test Methods & Guidelines'' on the left-side navigation menu.

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–2008–0704 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 February 16, 2010.

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–2008–0704, 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. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73640) (FRL–8390–4), 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 8F7437) by Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513. The petition requested that 40 CFR 180.609 be amended by establishing tolerances for combined residues of the fungicide fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on corn, field, grain at 0.02 parts per million (ppm); corn, field, aspirated grain fractions at 0.50 ppm; corn, field, forage at 3.0 ppm; corn, field, fodder/stover at 4.5 ppm; soybean, seed at 0.05 ppm; soybean, aspirated grain fractions at 0.40 ppm; soybean, forage at 9.0 ppm; soybean, hay at 1.2 ppm; and soybean, hulls at 0.40 ppm.

Also in the **Federal Register** of December 3, 2008 (73 FR 73644) (FRL–8386–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a another pesticide petition (PP 8F7406) by Arysta LifeScience North America, LLC. The petition requested that 40 CFR 180.609 be amended by establishing

tolerances for the combined residues of the fungicide fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime , in or on low growing berries (crop subgroup 13-07G) at 1.9 ppm. Each notice referenced a summary of the appropriate petition which had been prepared by Arysta LifeScience North America, LLC, the registrant, and is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has corrected the commodity and subgroup names, and replaced ''corn, field, aspirated grain fractions'' and ''soybeans, aspirated grain fractions'' with ''aspirated grain fractions.'' EPA has also substantially increased the tolerance for aspirated grain fractions and decreased the tolerance for soybean, hulls. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal upper 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 the combined residues of fluoxastrobin and its Z isomer in or on aspirated grain fractions at 20 ppm; berry, low growing, subgroup 13-07G at 1.9 ppm; corn, field, forage at 3.0 ppm; corn, field grain at 0.02 ppm; corn, field, stover at 4.5 ppm; soybean, forage at 9.0 ppm; soybean, hay at 1.2 ppm; soybean, hulls at 0.20 ppm; soybean, seed at 0.05 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. Fluoxastrobin shows low acute toxicity via the oral, dermal, and inhalation routes of exposure; is a moderate eye irritant; and is neither a dermal irritant nor a sensitizer. Following repeated administration, fluoxastrobin has mild or low toxicity in all tested species other than the dog which displayed adverse liver toxicity at considerably lower doses than those noted for other testing species. The most common finding across all testing species is decreased body weight. In the available toxicity studies on fluoxastrobin, there is no estrogen, androgen, and/or thyroid mediated toxicity. Fluoxastrobin does not produce developmental toxicity in rats or rabbits. In the rat and rabbit developmental toxicity studies and the two-generation reproduction rat study, there is no increased susceptibility to prenatal or postnatal exposure to fluoxastrobin and no effects on reproduction. Fluoxastrobin is not neurotoxic following acute or repeated dosing in the rat. Fluoxastrobin is not genotoxic, and it is also not carcinogenic in rats or mice. Specific information on the studies received and the nature of the adverse effects caused by fluoxastrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of September 16, 2005 (70 FR 54640) (FRL–7719–9).

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*.

A summary of the toxicological endpoints for fluoxastrobin used for human risk assessment can be found at *http://www.regulations.gov* in the document ''Fluoxastrobin. Human Health Risk Assessment for Proposed Uses on Field Corn, Soybean, and the Low-Growing Berry Subgroup 13-07G,'' at page 20 in docket ID number EPA–HQ–OPP–2008–0704.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to fluoxastrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing fluoxastrobin tolerances in 40 CFR 180.609. EPA assessed dietary exposures from fluoxastrobin 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. No such effects were identified in the toxicological studies for fluoxastrobin; therefore, a quantitative acute dietary exposure assessment was not performed.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture 1994–1996 and 1998 CSFII. As to residue levels in food, EPA performed an unrefined dietary (food and drinking water) exposure assessment. The assumptions of this dietary assessment included tolerance level residues and 100% crop treated. Experimentally derived processing factors were applied for tomato puree, potato chips, dry potato granules/flakes, and potato flour. For all other processed commodities, DEEM version 7.81 default processing factors were assumed.

iii. *Cancer*. The Agency has concluded that fluoxastrobin is not likely to be carcinogenic to humans. Therefore cancer risk is not of concern for this chemical.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or less than 100% crop treated information in the dietary assessment for fluoxastrobin. Tolerance level residues and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluoxastrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluoxastrobin. 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 FQPA Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of fluoxastrobin for chronic exposures for non-cancer assessments are estimated to be 28 parts per billion (ppb) for surface water and less than 1 ppb for ground water. The modeled estimate of surface drinking water concentration was directly entered into the dietary exposure model. For chronic dietary risk assessment, a water concentration value of 28 ppb was used to assess the contribution of 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, termite control, and flea and tick control on pets).

Fluoxastrobin is currently registered for the following uses that could result in postapplication residential exposures: Turf, including lawns and golf courses. No residential handler exposure uses have been registered because all applications to residential turf must be made by a certified pest control operator. EPA assessed residential exposure using the following assumptions: Maximum application rates, no dissipation of residues after the day of application, and no dissipation of residues because of periodic growth and recutting of the grass. The Agency believes that the calculated risks represent screening level estimates. Principal potential routes of exposure include dermal and incidental oral ingestion. The Agency has assumed that most residential use will result in short-term exposures but that intermediate-term exposures are also possible. It should be noted that the new fluoxastrobin uses assessed for this final rule do not include any residential uses.

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 fluoxastrobin to share a common mechanism of toxicity with any other substances, and fluoxastrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluoxastrobin 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 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 toxicity database for fluoxastrobin, including acceptable developmental toxicity studies in rats and rabbits, as well as a two-generation reproduction toxicity study, provides no indication of prenatal and/or postnatal sensitivity.

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 1X. That decision is based on the following findings:

i. The toxicity database for fluoxastrobin is considered adequate to support endpoint selection for risk assessment and FQPA evaluation. The submitted studies are of good quality and provide sufficient information to determine whether fluoxastrobin poses a human health hazard. The only data deficiency that exists is the requirement for additional information concerning the mouse subchronic immunotoxicity study, for potential upgrade of the study. To address the immunotoxicity data requirement as presented in 40 CFR part 158 the Agency has examined the entire toxicity database for fluoxastrobin and drawn the following conclusion: There is no evidence of biologically relevant effects on the immune system that are related to fluoxastrobin and the overall weight of the evidence indicates that this chemical does not directly target the immune system.

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

iii. There is no indication of increased quantitative or qualitative susceptibility in rats or rabbits following *in utero* and/or postnatal exposure to fluoxastrobin.

iv. There are no residual uncertainties identified in the exposure database. The chronic dietary food exposure assessment utilizes proposed tolerance-level residues and 100% crop treated information for all commodities. Use of these screening-level assessment values helps ensure that chronic exposures and risks will not be underestimated. EPA additionally made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to fluoxastrobin in

drinking water. EPA used similarly conservative assumptions to assess residential post-application exposure of children as well as incidental oral exposure of toddlers to fluoxastrobin. These assessments will not underestimate the exposure and risks posed by fluoxastrobin.

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-, intermediate-, 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. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluoxastrobin is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluoxastrobin from food and water will utilize 38% of the cPAD for children 1 to 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 fluoxastrobin is not expected.

3. *Short- and intermediate-term risk*. Fluoxastrobin is currently registered for uses that could result in both short- and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to fluoxastrobin. Short- and intermediate-term aggregate exposure assessments take into account short- and intermediate-term residential exposure, respectively, plus chronic exposure to food and water (considered to be a background exposure level). Because all short- and intermediate-term quantitative hazard estimates (via the dermal and incidental oral routes) for fluoxastrobin are based on the same endpoint, a screening-level, conservative aggregate risk assessment was conducted that combined the short-term incidental oral and intermediate-term exposure estimates (i.e., the highest exposure estimates). The Agency believes that most residential exposure will be short-term, based on the use pattern.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that the combined short- and intermediate-term food, water, and residential exposures aggregated result in aggregate MOEs of 750 for adult males, 840 for adult females, and 160 for children 1 to 2 years old. For adult males and adult females, residential exposure is via the oral (background) and dermal (primary) routes. For children 1 to 2 years old, residential exposure is via the oral (background) and incidental oral and dermal (primary) routes.

4. *Aggregate cancer risk for the U.S. population*. The Agency has concluded that fluoxastrobin is not likely to be carcinogenic to humans. Therefore cancer risk is not of concern for this chemical.

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 fluoxastrobin residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry method) is available to enforce the tolerance expression. Method No. 00604 is available for plant commodities and Method No. 00691, Modification 001, is available for animal commodities. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established Codex, Canadian, or Mexican Maximum Residue Levels (MRLs) for fluoxastrobin for the low-growing berry subgroup 13-07G, soybean, or field corn commodities.

C. Revisions to Petitioned-For Tolerances

EPA converted ''corn, field, fodder/stover'' to ''corn, field, stover'' to conform to the terminology in the current pesticide commodity vocabulary. The Agency also replaced ''corn, field, aspirated grain fractions'' and ''soybean, aspirated grain fractions'' with ''aspirated grain fractions'' to conform to the terminology in the current pesticide commodity vocabulary. The proposed tolerances of 0.50 ppm in or on corn, field, aspirated grain fractions and 0.40 ppm in or on soybean, aspirated grain fractions were changed to a tolerance of 20 ppm in or on aspirated grain fractions based on current guidance, which recommends that the established tolerance be based on the aspirated grain fraction that has the highest residues. In this case it is soybean. The soybean highest available field trial (HAFT) residue of 0.031 ppm multiplied by the expected processing factor for aspirated grain fractions of 611x produces calculated expected residues in aspirated grain fractions of 18.9 ppm. The fluoxastrobin tolerance in/on aspirated grain fractions was therefore set at 20 ppm. The proposed tolerance of 0.40 ppm in/on soybean hulls was reduced to 0.20 ppm because the HAFT residue for soybean of 0.031 ppm is expected to concentrate 4x in soybean hulls. This produces a calculated residue of 0.124 ppm and a decision that a tolerance of 0.20 ppm is appropriate. In addition, the establishment of tolerances on field corn commodities requires that the tolerance for indirect and inadvertent residues for fluoxastrobin and its Z isomer in/on grain, cereal, forage, fodder, and straw, group 16, be modified to apply to grain, cereal, forage, fodder, and straw, group 16, except corn instead. The tolerance expressions in 40 CFR 180.609 are also being modified to conform to new Agency guidance on the language tolerance expressions should conform to, but this change does not have any other effect on the existing fluoxastrobin tolerances.

V. Conclusion

Therefore, tolerances are established for the combined residues of fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, in or on aspirated grain fractions at 20 ppm; berry, low growing, subgroup 13-07G at 1.9 ppm; corn, field, forage at 3.0 ppm; corn, field, grain at 0.02 ppm; corn, field, stover at 4.5 ppm; soybean, forage at 9.0 ppm; soybean,

hay at 1.2 ppm; soybean, hulls at 0.20 ppm; and soybean, seed at 0.05 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: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.609 is revised to read as follows:

§ 180.609 Fluoxastrobin; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of fluoxastrobin, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only fluoxastrobin, (1E)-[2-[[6-(2-chloro phenoxy)-5-fluoro-4-pyrimidinyl] oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, calculated as the stoichiometric equivalent of fluoxastrobin.

Commodity	Parts per million
Aspirated grain fractions	20
Berry, low growing, subgroup 13-07G	1.9
Corn, field, forage	3.0
Corn, field, grain	0.02
Corn, field, stover	4.5
Leaf petioles subgroup 4B	4.0
Peanut	0.010
Peanut, hay	20.0
Peanut, refined oil	0.030
Soybean, forage	9.0
Soybean, hay	1.2
Soybean, hulls	0.20
Soybean, seed	0.05
Tomato, paste	1.5
Vegetable, fruiting, group 8	1.0
Vegetable, tuberous and corm, subgroup 1C	0.010

(2) Tolerances are established for residues of fluoxastrobin, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, and its phenoxy-hydroxy pyrimidine, 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol, calculated as the stoichiometric equivalent of fluoxastrobin.

Commodity	Parts per million
Cattle, fat	0.10
Cattle, meat	0.05
Cattle, meat byproducts	0.10
Goat, fat	0.10
Goat, meat	0.05
Goat, meat byproducts	0.10
Horse, fat	0.10
Horse, meat	0.05
Horse, meat, byproducts	0.10
Milk	0.02
Milk, fat	0.50
Sheep, fat	0.10
Sheep, meat	0.05
Sheep, meat byproducts	0.10

(b) *Section 18 emergency exemptions.* [Reserved]

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

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent residues of

fluoxastrobin, including its metabolites and degradates, in or on the commodities in the table below, when present therein as a result of the application of fluoxastrobin to the growing crops listed in paragraph (a)(1) of this section. Compliance with the tolerance levels specified below is to be determined by measuring only fluoxastrobin, (1E)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime and its Z isomer, (1Z)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone O-methyloxime, calculated as the stoichiometric equivalent of fluoxastrobin.

Commodity	Parts per million
Alfalfa, forage	0.050
Alfalfa, hay	0.10
Cotton, gin byproducts	0.020
Grain, cereal, forage, fodder, and straw, group 16, except corn	0.10
Grass, forage	0.10
Grass, hay	0.50
Vegetable, foliage of legume, group 7	0.050

[FR Doc. E9–30039 Filed 12–17–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0276; FRL–8800–8]

Prosulfuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of prosulfuron and its metabolites and degradates in or on cereal grain commodities. Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2008–0276. 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: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@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 Get Electronic Access to Other Related Information?

You may 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*. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select ''Test Methods & Guidelines'' on the left-side navigation menu.

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–2008–0276 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 February 16, 2010.

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–2008–0276, 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. Petition for Tolerance

In the **Federal Register** of August 13, 2008 (73 FR 47186) (FRL–8375–8), 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 5F4469) by Syngenta Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.481 be amended by establishing tolerances for residues of the herbicide prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea, in or on field and popcorn grain, fodder, and forage at 0.01 parts per million (ppm); cereal grains group (except rice and wild rice), fodder at 0.01 ppm; forage at 0.10 ppm; grain at 0.01 ppm; hay at 0.20 ppm; straw at 0.02 ppm; cattle, goat, hog, horse, sheep fat, kidney, liver, meat, and meat byproducts at 0.05 ppm; and milk at 0.01 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has determined that corn and livestock commodity tolerances proposed in the petition are not required. EPA has also revised the cereal grain commodity terms and the tolerance expression for prosulfuron. The reasons for these changes are explained in Unit IV.C.

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 residues of prosulfuron and its metabolites and degradates on grain, cereal, forage, fodder, and straw, group 16, except rice, fodder at 0.01 ppm; grain, cereal, forage, fodder, and straw, group 16, except rice, forage at 0.10 ppm; grain, cereal, forage, fodder, and straw, group 16, except rice, hay at 0.20 ppm; grain, cereal, forage, fodder, and straw, group 16, except rice, straw at 0.02 ppm; and grain, cereal, group 15, except rice at 0.01 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.

Toxicology studies indicate that prosulfuron has minimal toxicity under acute exposure conditions and that it is not a skin or eye irritant or dermal sensitizer. In chronic and subchronic studies with prosulfuron, some treatment-related effects were observed, most commonly effects on body weight. Evidence of neurotoxicity was also observed in gavage studies. Effects consistent with neurotoxicity (primarily gait and sensorimotor effects) were observed in rabbits in the developmental toxicity range-finding study and in rats in the acute neurotoxicity screening study. However, neurotoxic effects were not observed following oral exposure to prosulfuron, and there was no evidence from the developmental and reproductive studies of increased susceptibility to these effects in rat or rabbit fetuses or offspring.

Previously, EPA classified prosulfuron as a Group D Chemical (''Not Classifiable as to Human Carcinogenicity''), a classification consistent with the cancer guidelines in effect at the time (1995). This classification was based on the lack of evidence of carcinogenicity in male or female mice at the limit dose and equivocal evidence of carcinogenicity in female rats. In female rats, there was suggestive evidence of a possible treatment-related increase in the incidence of adenocarcinomas of the mammary glands at the mid dose but not at the high dose. This lack of dose-response (i.e. the relatively limited response in the high dose group and a more pronounced response in the middle-dose group) along with the lack of evidence of carcinogenicity in mice and the lack of evidence for *in vivo* or *in vitro* mutagenicity lowered the concern for the carcinogenic potential of prosulfuron. EPA has reviewed this evidence under the current 2005 guidelines for Carcinogen Risk Assessment and concluded that Prosulfuron should be classified as ''Not Likely to Be Carcinogenic to Humans.''

Specific information on the studies received and the nature of the adverse effects caused by prosulfuron 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 the document titled ''Prosulfuron. Revised Human Health Risk Assessment for the Proposed Establishment of Permanent Tolerances for Uses in/on Cereal Grains (Crop Group 15), Except Rice'', page 33 in docket ID number EPA–HQ–OPP–2008–0276.

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-term, intermediate-term, 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*.

A summary of the toxicological endpoints for prosulfuron used for human risk assessment can be found at *http://www.regulations.gov* in the document titled ''Prosulfuron. Revised Human Health Risk Assessment for the Proposed Establishment of Permanent Tolerances for Uses in/on Cereal Grains (Crop Group 15), Except Rice'', page 17 in docket ID number EPA–HQ–OPP–2008–0276.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to prosulfuron, EPA considered exposure under the petitioned-for tolerances. There are no other tolerances currently in effect for prosulfuron. Temporary tolerances on cereal grains and livestock commodities expired on December 31, 1999. EPA is establishing permanent tolerances on cereal grain commodities in this action but has determined that livestock tolerances are unnecessary, since there is no expectation of finite residues in livestock commodities from prosulfuron's use on cereal grains. EPA assessed dietary exposures from prosulfuron 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 U. S. 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 that residues are present in cereal grains at the tolerance level and that 100% of cereal grains are treated with prosulfuron.

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 assumed that residues are present in cereal grains at the tolerance level and that 100% of cereal grains are treated with prosulfuron.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA does not expect prosulfuron to pose a cancer risk. Therefore, an exposure assessment to evaluate cancer risk is unnecessary for this chemical.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for prosulfuron. Tolerance level residues and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for prosulfuron in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of prosulfuron. 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) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of prosulfuron for acute exposures are estimated to be 1.872 parts per billion (ppb) for surface water and 0.655 ppb for ground water. The EDWCs for chronic exposures for non-cancer assessments are estimated to be 0.583 ppb for surface water and 0.655 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 1.872 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 0.655 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). Prosulfuron is not registered for any specific use patterns that would result in residential exposure.

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 prosulfuron to share a common mechanism of toxicity with any other substances, and prosulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that prosulfuron 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 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 prosulfuron includes a developmental toxicity study in the rat, two developmental toxicity studies and a range-finding developmental study in the rabbit, and a 2–generation reproduction toxicity study in the rat. There was no evidence of increased susceptibility of fetuses or offspring in any of these studies.

There were no maternal or fetal effects observed at any dose in the first of two rabbit developmental toxicity studies. In the second rabbit study and in the rat developmental toxicity study, a dose-related increase in small fetuses and skeletal effects was observed, but only in the presence of maternal toxicity (decreased body weight gain in the rat study; and increases in abortions, decreases in food consumption and decreased mean body weight gain in the rabbit study).

In the developmental range-finding study in rabbits, maternal effects consistent with neurotoxicity (hypoactivity, muscle weakness and

incoordination of limbs/ataxia) were observed at all doses tested. Sciatic nerve degeneration and white matter degeneration of the spinal cord were also observed at higher dose levels. There was no evidence of neurotoxicity to fetuses or offspring observed in any of the developmental or reproduction toxicity studies.

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 1X. That decision is based on the following findings:

i. The toxicity database for prosulfuron is adequate to assess prenatal and postnatal toxicity. In accordance with part 158 Toxicology Data requirements, an immunotoxicity study (870.7800) is required for prosulfuron. In the absence of specific immunotoxicity studies, EPA has examined the available prosulfuron toxicity data for evidence of immunotoxic effects. No evidence of immunotoxicity was found. Due to the lack of evidence of immunotoxicity for prosulfuron in available studies, EPA does not believe that conducting immunotoxicity testing will result in a NOAEL less than the chronic NOAEL of 5.3 milligrams/kilograms (mg/kg) bodyweight/day (bw/day) already established for prosulfuron, and an additional database uncertainty factor is not needed to account for the lack of this study.

ii. Although there was evidence of neurotoxicity following gavage exposure to prosulfuron in the rat (ataxia, decreased motor activity, decreased body temperature, impaired gait and righting reflex) and in the pregnant rabbit (ataxia, hypoactivity, neuropathology), there is low concern for these effects. The findings were observed only at high doses (at or above 250 mg/kg/day) following gavage dosing and were not observed following dietary exposure to levels up to 628 mg/kg/day. For example, the acute neurotoxicity study in rats involved gavage dosing and showed neurotoxic effects at 250 mg/kg/day but the subchronic neurotoxicity study in rats which did not involve gavage dosing did not show neurotoxic effects at the highest dose tested (628/313 male/female (M/F) mg/kg/day). The neurotoxicity findings in the pregnant rabbit were observed at a dose causing death, abortions and systemic toxicity, and the neuropathology did not show a dose-response. Furthermore, there was no evidence for neurotoxicity in offspring in the developmental studies or in the rat reproduction study, and increased prenatal and/or postnatal susceptibility was not observed. Based on these considerations, EPA has concluded that a developmental neurotoxicity (DNT) study is not required for prosulfuron and an additional uncertainty factor is not needed to account for potential neurotoxicity.

iii. There is no evidence that prosulfuron 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.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to prosulfuron in drinking water. Prosulfuron is not registered for residential uses. These assessments will not underestimate the exposure and risks posed by prosulfuron.

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*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to prosulfuron will occupy less than 1% of the aPAD for the general population and all population subgroups, including infants and children's subgroups.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to prosulfuron from food and water will utilize less than 1% of the aPAD for the general population and all population subgroups, including infants and children's subgroups. There are no residential uses for prosulfuron.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure take into account short-term or intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Prosulfuron is not registered for any use patterns that would result in residential exposure. Therefore, the short-term or intermediate-term aggregate risk is the sum of the risk from exposure to prosulfuron through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. Based on a lack of evidence for carcinogenicity in mice and rats following long-term dietary administration, prosulfuron is not expected to pose a cancer risk.

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 prosulfuron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-performance liquid chromatography (HPLC)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No CODEX maximum residue limits have been established for prosulfuron.

C. Revisions to Petitioned-For Tolerances

EPA has determined that the corn and livestock commodity tolerances proposed in the petition are not required. Field corn and popcorn are members of the Crop Group 15 (cereal grains); therefore, residues on corn commodities will be covered by the cereal grains (group 15) tolerances. Tolerances are not required for livestock commodities because there is no expectation of finite residues in livestock commodities from the use of prosulfuron on cereal grains. EPA has also revised the cereal grain commodity terms to agree with the Agency's Food and Feed Commodity Vocabulary.

Finally, EPA has revised the prosulfuron tolerance expression to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression makes clear that the

tolerances cover residues of prosulfuron and its metabolites and degradates, but that compliance with the tolerance levels will be determined by measuring only prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea, in or on the commodities.

EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of prosulfuron and its metabolites and degradates in or on grain, cereal, forage, fodder, and straw, group 16, except rice, fodder at 0.01 ppm; grain, cereal, forage, fodder, and straw, group 16, except rice, forage at 0.10 ppm; grain, cereal, forage, fodder, and straw, group 16, except rice, hay at 0.20 ppm; grain, cereal, forage, fodder, and straw, group 16, except rice, straw at 0.02 ppm; and grain, cereal, group 15, except rice at 0.01 ppm. Compliance with these tolerances will be determined by measuring only prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea, in or on the commodities.

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: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.481 is revised to read as follows:

§ 180.481 Prosulfuron; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide prosulfuron and its metabolites and degradates in or on the commodities in the table below. Compliance with the tolerance levels specified in the table below is to be determined by measuring only prosulfuron, 1-(4-methoxy-6-methyl-triazin-2-yl)-3-[2-(3,3,3-trifluoropropyl)-phenylsulfonyl]-urea, in or on the commodity.

Commodity	Parts per million
Grain, cereal, forage, fodder, and straw, group 16, except rice, fodder	0.01
Grain, cereal, forage, fodder, and straw, group 16, except rice, forage	0.10
Grain, cereal, forage, fodder, and straw, group 16, except rice, hay	0.20
Grain, cereal, forage, fodder, and straw, group 16, except rice, straw	0.02
Grain, cereal, group 15, except rice	0.01

(b) *Section 18 emergency exemptions.* [Reserved]

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

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

[FR Doc. E9–30194 Filed 12–17–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0811; FRL–8799–1]

Mesotrione; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of mesotrione in or on soybean, seed. Syngenta Crop Protection requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2008–0811. 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: Joanne Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6224; e-mail address: *miller.joanne@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*. To access the OPPTS Harmonized Test Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/oppts/* and select ''Test Methods & Guidelines'' in the left side margin menu.

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–2008–0811 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 February 16, 2010.

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–2008–0811, 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. Petition for Tolerance

In the **Federal Register** of December 3, 2008 (73 FR 73648) (FRL–8391–3), 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 8F7456) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.571 be amended by establishing tolerances for residues of the herbicide, mesotrione, in or on soybeans at 0.01 parts per million (ppm). That notice referenced a summary of the petition prepared by Syngenta Crop Protection, 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.

To harmonize with the Food and Feed Commodity Vocabulary, *http://www.epa.gov/opphed01/foodfeed/index.htm/*, EPA has amended the commodity listing to read: Soybean, seed at 0.01 ppm.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA

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

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 residues of mesotrione, including its metabolites and degradates, in or on soybean, seed at 0.01 ppm. Compliance with the tolerance level is to be determined by measuring only mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in the raw agricultural commodity. 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.

Mesotrione has a low acute toxicity via the oral, dermal, and inhalation routes. It is a mild eye irritant, but is not a dermal irritant or a dermal sensitizer. In subchronic and chronic oral studies, ocular lesions, liver and kidney effects, and/or body weight decrements were the major adverse effects seen in the rat, mouse, and dog. Plasma tyrosine levels were increased in the rat, mouse and dog in the chronic and reproduction studies in which levels were measured. The ocular, liver and kidney effects are believed to be mediated by the high tyrosine levels in the blood caused by inhibition of the enzyme HPPD. Even though the rat is the most sensitive species to this effect compared to the dog and the mouse, EPA concluded that the mouse is a more appropriate model for assessing human risk than is the rat.

There was no evidence of carcinogenic potential in either the rat chronic toxicity/carcinogenicity or mouse carcinogenicity studies and no concern for mutagenicity. No evidence of neurotoxicity or neuropathology was seen in the acute and subchronic neurotoxicity studies. In the multi-generation mouse reproduction study, one first generation male and one first generation female had retinal detachment with marked cataractous changes at the highest dose tested (>1,000 mg/kg/day). In the subchronic toxicity dog study, the high-dose females had decreased absolute and relative brain weights; however, no microscopic abnormalities were noted in any brain tissues from the high-dose group and effect was not observed in the chronic toxicity dog study. There is some concern about the effects of elevated plasma tyrosine levels on the developing nervous system in children due to a report that some patients with tyrosinemia III (an autosomal recessive disorder in which HPPD is deficient) were presented with mental retardation or neurological symptoms. There was evidence of increased susceptibility of rats, mice and rabbits to *in utero* and/or post-natal exposure to mesotrione.

Specific information on the studies received and the nature of the adverse effects caused by mesotrione 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 the document ''Mesotrione: Human Health Risk Assessment for Section 3 New Uses on Soybeans'' in docket ID number EPA–HQ–OPP–2008–0811. Additionally, mesotrione toxicological data are discussed in the final rule published in the **Federal Register** of June 21, 2001 (66 FR 33187) (FRL–6787–7).

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*.

A summary of the toxicological endpoints for mesotrione used for human risk assessment is discussed in ''Mesotrione: Human Health Risk Assessment for Section 3 New Uses on Soybeans'' in docket ID number EPA–HQ–OPP–2008–0811. Additionally, mesotrione toxicological data are discussed in the final rule published in the **Federal Register** of June 21, 2001 (66 FR 33187) (FRL–6787–7)

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to mesotrione, EPA considered exposure under the petitioned-for tolerances as well as all existing mesotrione tolerances in 40 CFR 180.571. EPA assessed dietary exposures from mesotrione 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.

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

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that all foods were treated for which there are proposed and established tolerances and that all the foods contain tolerance-level residues.

iii. *Cancer*. Mesotrione was negative for carcinogenicity in feeding studies in rats and mice and was classified as ''not likely'' to be a human carcinogen. Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for mesotrione in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of mesotrione. 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) and Screening Concentration in Ground Water (SCI-GROW) models for the experimental use permit issued for an experimental program with mesotrione on soybeans (100-EUP-114), the estimated drinking water concentrations (EDWCs) of mesotrione for chronic exposures are estimated to be 5.1 parts per billion (ppb) for surface water and 0.54 ppb for ground 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).

Mesotrione is currently registered for the following uses that could result in residential exposures: Golf course, commercial and residential turf. EPA assessed residential exposure using the following assumptions: Residential adult handlers (dermal and inhalation) as well as postapplication exposure to adults (dermal), youths (dermal), and toddlers (dermal and incidental oral) to residues on treated grass was assessed.

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.''

Mesotrione, pyrasulfotole, isoxaflutole and topramezone belong to a class of herbicides that inhibit the liver enzyme, 4-hydroxyphenylpyruvate dioxygenase (HPPD), which is involved in the catabolism (metabolic breakdown) of tyrosine (an amino acid derived from proteins in the diet). Inhibition of HPPD can result in elevated tyrosine levels in the blood, a condition called tyrosinemia. HPPD-inhibiting herbicides have been found to cause a number of toxicities in laboratory animal studies including ocular, developmental, liver and kidney effects. Of these toxicities, it is the ocular effect (corneal opacity) that is highly correlated with the elevated blood tyrosine levels. In fact, rats dosed with tyrosine alone show ocular opacities similar to those seen with HPPD inhibitors. Although the other toxicities may be associated with chemically-induced tyrosinemia, other mechanisms may also be involved.

There are marked differences among species in the ocular toxicity associated with inhibition of HPPD. Ocular effects following treatment with HPPD inhibitor herbicides are seen in the rat but not in the mouse. Monkeys also seem to be recalcitrant to the ocular toxicity induced by HPPD inhibition. One explanation of this species-specific response in ocular opacity may be related to the species differences in the clearance of tyrosine. A metabolic pathway exists to remove tyrosine from the blood that involves a liver enzyme called tyrosine aminotransferase (TAT). In contrast to rats where ocular toxicity is observed following exposure to HPPD-inhibiting herbicides, mice and humans are unlikely to achieve the levels of plasma tyrosine necessary to produce ocular opacities because the activity of TAT in these species is much greater compared to rats. HPPD inhibitors (e.g., nitisinone) are used as an effective therapeutic agent to treat patients suffering from rare genetic diseases of tyrosine catabolism. Treatment starts in childhood but is often sustained throughout patient's lifetime. The human experience indicates that a therapeutic dose (1 mg/kg/day dose) of nitisinone has an excellent safety record in infants, children and adults and that serious adverse health outcomes have not been observed in a population followed for approximately a decade. Rarely, ocular effects are seen in patients with high plasma tyrosine levels; however, these effects are transient and can be readily reversed upon adherence to a restricted protein diet. This indicates that an HPPD inhibitor in and of itself cannot easily overwhelm the tyrosine-clearance mechanism in humans.

Therefore, exposure to environmental residues of HPPD-inhibiting herbicides are unlikely to result in the high blood levels of tyrosine and ocular toxicity in humans due to an efficient metabolic process to handle excess tyrosine. The Agency continues to study the complex relationships between elevated tyrosine levels and biological effects in various species. Nonetheless, as a worst case scenario, EPA has assessed aggregate exposure to mesotrione based on ocular effects in rats. For similar reasons, a semi-quantitative screening cumulative assessment was conducted using the rat ocular effects and 100% crop treated information. The results of this screening analysis did not indicate a concern. In the future, assessments of HPPD-inhibiting herbicides will consider more appropriate models and cross species extrapolation methods. For additional 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 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*. There is quantitative evidence of increased susceptibility of the young in the oral prenatal developmental toxicity studies in rats, mice, and rabbits and in the multi-generation reproduction study in mice. Quantitative evidence of increased susceptibility was not demonstrated in the multi-generation reproduction study in rats. The ocular discharge seen in the reproductive study in mice provided a highly conservative endpoint at 7,000 ppm. There is a well characterized NOAEL protecting

offspring in the developmental and reproductive studies in mice (relevant species for human-health risk assessment). The endpoints and dose selected for the RfD, as well as incidental exposure assessments, will be protective of the effects seen in the developmental toxicity study in rabbits.

3. *Conclusion*. EPA concluded that an additional FQPA SF is needed to address uncertainty due to reliance on a LOAEL from the mouse two-generation reproduction study in establishing the POD for mesotrione. Nonetheless, EPA determined that there is reliable data showing that the default additional safety factor value of 10X can be safely reduced to 3X. This conclusion is based on the following:

i. The toxicity database for mesotrione is complete, except for immunotoxicity testing and a deficiency in the mouse two-generation reproduction study (lack of a NOAEL). EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. These studies are not yet available for mesotrione. In the absence of specific immunotoxicity studies, EPA has evaluated the available mesotrione toxicity data to determine whether an additional database uncertainty factor is needed to account for potential immunotoxicity of mesotrione. There was no evidence of adverse effects on the organs of the immune system in any study with mesotrione. Based on these considerations, EPA does not believe that conducting a special test guideline series, 870.7800 immunotoxicity study will result in a point of departure less than the LOAEL of 2.1 mg/kg/day used in calculating the cPAD for mesotrione; therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

ii. The LOAEL used to establish the level of concern is based on tyrosineanemia in mice caused by excess tyrosine in the blood. Mesotrione can lead to excess tyrosine because it inhibits the liver enzyme HPPD which metabolically breaks down tyrosine. Tyrosine can also be removed from the blood by the activity of tyrosine aminotransferase (TAT). EPA reviewed comparative data on TAT in the rat, mouse and human, and concluded that the mouse and the human were similar in their ability to remove the excess tyrosine from the blood, while the rat was more limited in this ability and thus more sensitive to the effects of HPPD inhibition. Because a 10X interspecies factor has been retained despite evidence that the mouse is not less sensitive than humans to these effects, it is not necessary to retain the full tenfold FQPA factor to account for the use of a LOAEL from the mouse two-generation reproduction study. In effect, by not reducing the interspecies factor and retaining a 3X FQPA SF, EPA is retaining an additional SF for the protection of infants and children that is at least equal to 10X.

iii. There is low concern for the susceptibility seen in the developmental studies in mice (relevant species for human health risk assessment) because there is a well characterized NOAEL protecting offspring in these studies. In the developmental toxicity study in New Zealand white rabbits and in rats, no NOAEL was established for the developmental effects. However, since the effects seen in the rabbits and rat studies were at much higher doses (twentyfold) than the dose used for establishing the POD, the POD is protective of the effects seen in the developmental toxicity studies in rats and rabbits.

iv. Mesotrione exerts its toxicity via the inhibition of HPPD, causing the build-up of tyrosine levels in the blood. There are data in the published literature indicating that children with elevated plasma tyrosine levels during development due to a genetic disorder may have mental retardation or neurological symptoms. However, by protecting against the excessive build-up of tyrosine in the blood, the human health risk assessment is protective of all adult and child populations. Further, because the data show that any potential developmental neurotoxicity of mesotrione is related to the build-up of tyrosine in the blood and nervous tissues, it is not necessary to conduct a DNT study.

v. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessment utilizes proposed tolerance level residues and 100% crop treated for all commodities. EPA made conservative (protective) assumptions in the residue estimates used to assess exposure to mesotrione in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children including incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by mesotrione.

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-, intermediate-, 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*. There were no effects observed in oral toxicity studies including developmental toxicity studies in rats and rabbits that could be attributable to a single dose (exposure). Therefore, mesotrione is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to mesotrione from food and water will utilize 5.8% of the cPAD for (all infants less than 1 year old) the population group receiving the greatest exposure. Long-term aggregate risk was not calculated because residential post-application exposure over the long-term duration (more than 6 months) is not expected based on the potential residential use pattern of mesotrione.

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

Mesotrione is currently registered for use on golf course, commercial and residential turf that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to mesotrione. Residential handler (adult only) as well as postapplication exposure to adults, youths, and toddlers to residues on treated grass was assessed. A summary of the assumptions for residential handler (dermal and inhalation) and post application dermal and incidental oral (toddlers only) exposure from mesotrione use on turf grass can be found at *http://www.regulations.gov* in document ''Mesotrione: Human-Health Risk Assessment for Section 3 New Uses on Soybeans'' at page 23 in docket ID number EPA–HQ–OPP–2006–0811.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 370 for toddlers,

6,000 for youth, and 2,600 for adults. As EPA's Level of Concern (LOC) of 300 for mesotrione is below these MOEs, they are not of concern.

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

Mesotrione is currently registered for use on residential turf grass that could result in intermediate-term residential exposure to toddlers from ingestion of treated soil and the Agency has determined that it is appropriate to aggregate chronic exposure to mesotrione through food and water with intermediate-term exposures for mesotrione.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures aggregated result in aggregate MOE of 9,000 for toddlers. As EPA's LOC of 300 for mesotrione is below this MOE, it is not of concern.

5. *Aggregate cancer risk for U.S. population*. Mesotrione is classified as ''not likely'' to be carcinogenic in humans based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in the rat. Therefore, mesotrione is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology, high-pressure liquid chromatography fluorescence detector (HPLC/FLD), is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/Maximum Residue Levels (MRLs) for mesotrione residues for the proposed crop. Thus, harmonization is not an issue at this time.

V. Conclusion

Therefore, a tolerance is established for residues of the herbicide, mesotrione, including its metabolites and degradates, in or on soybean, seed at 0.01 ppm. Compliance with the tolerance level is to be determined by measuring only mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in the raw agricultural commodity.

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: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.571 is amended by revising introductory text of paragraph (a) and by alphabetically adding the commodity ''soybean, seed'' to the table in paragraph (a) to read as follows:

§ 180. 571 Mesotrione; tolerances for residues.

(a) General. Tolerances are established for residues of the herbicide mesotrione, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on the following raw agricultural commodities:

Commodity	Parts per million
* * * *	*
Soybean, seed	0.01
* * * *	*

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[FR Doc. E9–30034 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0005; FRL–8797–9]

Tribenuron methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tribenuron methyl and its metabolites and degradates in or on grain, aspirated fractions; soybean, forage; soybean, hay; and soybean, hulls; and revises existing tolerances for residues for tribenuron methyl and its metabolites and degradates in or on corn, field, forage; corn, field, grain; corn, field, stover; and soybean, seed. E.I. du Pont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2009–0005. 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: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@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*. To access the OPPTS Harmonized Test Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/oppts* and select ''Test Methods & Guidelines'' on the left side navigation menu.

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–2009–0005 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 February 16, 2010.

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–2009–0005, 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. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), 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 8F7432 and PP 8F7441) by E.I. du Pont de Nemours and Company, Laurel Run Plaza, P.O. Box 80038, Wilmington, DE 19880–0038. The petitions requested that 40 CFR 180.451 be amended by establishing tolerances for residues of the herbicide tribenuron methyl, methyl-2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl] amino] sulfonyl] benzoate, (in PP 8F7441) in or on corn, field, grain at 0.01 parts per million (ppm); corn, field, forage at 0.2 ppm; corn, field, stover at 1.1 ppm; and corn, aspirated grain fractions at 3.55 ppm; and (in PP 8F7432) in or on soybean, seed at 0.01 ppm; soybean, forage at 0.06 ppm; soybean, hulls at 0.04 ppm; soybean, aspirated grain fractions at 3.46 ppm; and soybean, hay at 0.25 ppm. That notice referenced a summary of the petitions prepared by E.I. du Pont de Nemours and Company, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petitions, EPA has increased the proposed tolerances on soybean hay and forage, decreased the proposed tolerance on field corn forage, and determined that a tolerance should be established for ''grain, aspirated fractions'', in lieu of the proposed tolerances on ''soybean, aspirated grain fractions'' and ''corn, field, aspirated grain fractions.'' EPA has also revised the tribenuron methyl tolerance expression for all existing and new tolerances. The reasons for these changes are explained in Unit IV.C.

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 residues of tribenuron methyl and its metabolites and degradates on corn, field, forage at 0.15 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 1.1 ppm; grain, aspirated fractions at 1.5 ppm; soybean, forage at 0.07 ppm; soybean, hay at 0.35 ppm; soybean, hulls at 0.04 ppm and soybean, seed at 0.01 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.

Tribenuron methyl has low to moderate acute toxicity via the oral, inhalation, and dermal routes of exposure. It is not a dermal irritant, but was found to be mildly irritating to the eye and is a skin sensitizer.

Repeated dose oral toxicity studies in rats and dogs resulted primarily in decreased body weights and body weight gains accompanied by decreased food consumption. There is no evidence that tribenuron methyl targets specific organs following repeated oral exposure. There is no evidence that tribenuron methyl is neurotoxic. Although increased spleen weights were observed in the 90–day oral toxicity study in rats and decreased spleen weights were observed in the reproduction study (both potential indications of immunotoxicity), these effects occurred in the absence of other potential indicators of immunotoxicity.

EPA has classified tribenuron methyl as a Group C (possible human) carcinogen, based on statistically significant increases in mammary gland adenocarcinomas in female rats at the highest dose tested (HDT) (76 milligram/kilogram/day (mg/kg/day)). There was no evidence of carcinogenicity observed in the mouse carcinogenicity study. Quantitative cancer risk assessment is not recommended for tribenuron methyl because the tumors observed in rats occurred at a dose resulting in excessive toxicity (i.e., greater than the maximum tolerated dose), there was no evidence of genotoxicity, and structurally similar compounds are not known to be carcinogenic in rats and mice. The no observed adverse effect level (NOAEL) (0.8 mg/kg/day) selected for chronic risk assessment is considered to be protective of any potential cancer risk.

Developmental and reproductive toxicity studies indicated no increased susceptibility of offspring to tribenuron methyl. At the lowest observed adverse effect level (LOAEL) of 125 mg/kg/day in the developmental study in rats, decreased fetal weights were observed in the presence of decreased maternal body weights. At the HDT (500 mg/kg/day), increased resorptions, fetal deaths, and incomplete ossifications were observed, but these effects may be secondary to maternal toxicity. In the developmental rabbit study, maternal toxicity consisted of decreased food consumption and abortions at the HDT. At this same dose there was a 10% decrease in fetal body weights (not statistically significant). Since the number of dead fetuses and resorptions per litter were not correlated with the dosing level, the increased incidence of abortions in the high dose group is likely due to maternal toxicity. In a two-generation reproduction study, reproductive effects of tribenuron methyl were limited to decreased body weight gain during lactation. There was no evidence of increased susceptibility, as parental, offspring and reproduction

NOAELs and LOAELs were established at similar levels.

Specific information on the studies received and the nature of the adverse effects caused by tribenuron methyl as well as the NOAEL and the LOAEL from the toxicity studies can be found at *http://www.regulations.gov* in the document ''Tribenuron methyl. Human Health Risk Assessment for the Proposed Use of Tribenuron methyl on Corn and Soybean,'' page 33 in docket ID number EPA–HQ–OPP–2009–0005.

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-term, intermediate-term, 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*.

A summary of the toxicological endpoints for tribenuron methyl used for human risk assessment can be found at *http://www.regulations.gov* in the document ''Tribenuron methyl. Human Health Risk Assessment for the Proposed Use of Tribenuron methyl on Corn and Soybean,'' page 20 in docket ID number EPA–HQ–OPP–2009–0005.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to tribenuron methyl, EPA considered exposure under the petitioned-for tolerances as well as all existing tribenuron methyl tolerances in 40 CFR 180.451. EPA assessed dietary exposures from tribenuron methyl 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. No such effects were identified in the toxicological studies for tribenuron methyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the U.S Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that residues are present in all commodities at the tolerance level and that 100% of commodities are treated with tribenuron methyl. DEEM™ 7.81 default concentration factors were used to estimate residues of tribenuron methyl in processed commodities.

iii. *Cancer*. EPA classified tribenuron methyl as a Group C, possible human, carcinogen and determined that the chronic dietary risk assessment based on the cPAD would be protective of any potential cancer effects. Therefore, a separate exposure assessment to evaluate cancer risk is unnecessary. The weight of the evidence supporting this determination is discussed in Unit III.A.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for tribenuron methyl. Tolerance level residues and 100 PCT were assumed for all food commodities.

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the Estimated Drinking Water Concentrations (EDWCs) of tribenuron methyl for acute exposures are estimated to be 4.1 parts per billion (ppb) for surface water and 6.8 ppb for ground water. For chronic exposures for non-cancer assessments EDWCs are estimated to be 2.7 ppb for surface water and 6.8 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the only dietary exposure scenario for which a toxicological endpoint of concern was identified, the water concentration value of 6.8 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). Tribenuron methyl is not registered for any specific use patterns that would result in residential exposure.

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 tribenuron methyl to share a common mechanism of toxicity with any other substances, and tribenuron methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that tribenuron methyl 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 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 tribenuron methyl includes guideline rat and rabbit developmental toxicity studies and a two-generation reproduction toxicity study in rats. As discussed in Unit III.A., there is no quantitative or qualitative evidence of increased susceptibility of fetuses or offspring in any of these studies.

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 1X. That decision is based on the following findings:

i. The toxicity database for tribenuron methyl is adequate to assess prenatal and postnatal toxicity. In accordance with Part 158 Toxicology Data requirements, an immunotoxicity study (OPPTS Test Guideline 870.7800) and acute and subchronic neurotoxicity studies (OPPTS Test Guideline 870.6200) are required for tribenuron methyl. In the absence of specific immunotoxicity and neurotoxicity studies, EPA has evaluated the available tribenuron methyl toxicity data to determine whether an additional database uncertainty factor is needed to account for the lack of these studies.

a. *Immunotoxicity*: Increased spleen weights were observed in the 90–day oral toxicity study in rats at 118/135 (Male/Female) mg/kg/day, and decreased absolute spleen weights were observed in the offspring in the reproduction study at 250 mg/kg/day. These effects occurred in the absence of other potential indicators of immunotoxicity, including histopathology and alterations in hematology, and there were no accompanying effects on thymus weights. Finally, the dose selected for chronic risk assessment (cPAD of 0.008 mg/kg/day from the chronic dog toxicity study) is protective of any potential immunotoxicity (i.e., decreased spleen weights) from exposure to tribenuron methyl. Therefore, an additional UF is not needed to account for the lack of an immunotoxicity study.

b. *Neurotoxicity*: No evidence of neurotoxicity or neuropathology was observed in any of the toxicology studies for tribenuron methyl. Therefore, EPA has concluded that there is no need for a developmental neurotoxicity study or additional UFs to account for the lack of specific acute/subchronic neurotoxicity studies.

ii. There is no evidence that tribenuron methyl results in increased susceptibility *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed assuming 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to tribenuron methyl in drinking water. Residential exposure to tribenuron methyl is not expected. These assessments will not underestimate the exposure and risks posed by tribenuron methyl.

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 margin of exposure (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. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, tribenuron methyl is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to tribenuron methyl from food and water will utilize less than 4% of the cPAD for the general U.S. population and less than 8% of the cPAD for infants less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for tribenuron methyl.

3. *Short-term/intermediate-term risk*. Short-term/intermediate term aggregate exposure takes into account short-term/intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Tribenuron methyl is not registered for any use patterns that would result in residential exposure. Therefore, the short-term/intermediate-term aggregate risk is the sum of the risk from exposure to tribenuron methyl through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. As explained in Unit III.A. risk assessments based on the endpoint selected for chronic risk assessment are considered to be protective of any potential carcinogenic risk from exposure to tribenuron methyl. Based on the results of the chronic risk assessment discussed above in Unit III.E.2. EPA concludes that tribenuron methyl is not expected to pose a cancer risk.

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 tribenuron methyl residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography with tandem mass-spectrometric detection (LC/MS/MS) method, DuPont Method 13412 (Revision 1)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX, Canadian or Mexican maximum residue limits (MRLs) established on the commodities associated with these petitions.

C. Revisions to Petitioned-For Tolerances

EPA has increased the proposed tolerance on soybean, hay from 0.25 ppm to 0.35 ppm; increased the tolerance on soybean, forage from 0.06 ppm to 0.07 ppm; and decreased the proposed tolerance on corn, field, forage from 0.2 ppm to 0.15 ppm. EPA revised these tolerance levels based on analyses of the residue field trial data using the

Agency's Tolerance Spreadsheet in accordance with the Agency's Guidance for Setting Pesticide Tolerances Based on Field Trial Data. EPA also determined that a single tolerance at 1.5 ppm should be established for ''grain, aspirated fractions'', in lieu of the separately proposed tolerances of 3.46 ppm on ''soybean, aspirated grain fractions'' and 3.55 ppm on ''corn, field, aspirated grain fractions.'' The tolerance on grain, aspirated fractions (AGF) will cover residues on aspirated fractions of both corn and soybean. The tolerance level of 1.5 ppm was determined based on data for soybean indicating a concentration factor of 150x for AGF and the highest average field trial (HAFT) residue for of 0.01 ppm. Residues in corn AGF are expected to be lower, based on a concentration factor of only 13x and a HAFT of 0.01 ppm.

Finally, EPA has revised the tribenuron methyl tolerance expression for all existing and new commodities to clarify the chemical moieties that are covered by the tolerances and specify how compliance with the tolerances is to be measured. The revised tolerance expression makes clear that the tolerances cover ''residues of tribenuron methyl and its metabolites and degradates,'' but that compliance with the tolerance levels will be determined by measuring only ''tribenuron methyl, methyl-2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl] amino] sulfonyl] benzoate, in or on the commodities.

EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of tribenuron methyl and its metabolites and degradates in or on corn, field, forage at 0.15 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 1.1 ppm; grain, aspirated fractions at 1.5 ppm; soybean, forage at 0.07 ppm; soybean, hay at 0.35 ppm; soybean, hulls at 0.04 ppm and soybean, seed at 0.01 ppm. Compliance with these tolerances will be determined by measuring only tribenuron methyl, methyl-2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl] amino] sulfonyl] benzoate, in or on the commodities.

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: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.451 is amended by revising the introductory text in paragraph (a); revising the existing tolerances in paragraph (a) for corn, field, forage; corn, field, grain; corn, field, stover; and soybean, seed; and alphabetically adding the commodities grain, aspirated fractions; soybean, forage; soybean, hay; and soybean, hulls to the table in paragraph (a) to read as follows:

§ 180.451 Tribenuron methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide tribenuron methyl and its metabolites and degradates in or on the commodities in the following table. Compliance with the tolerance levels specified below is to be determined by measuring only tribenuron methyl,

methyl-2-[[[[N-(4-methoxy-6-methyl-1,3,5-triazin-2-yl) methylamino] carbonyl] amino] sulfonyl] benzoate, in or on the following commodities:

Commodity	Parts per million
* * * * *	
Corn, field, forage	0.15
Corn, field, grain	0.01
Corn, field, stover	1.1
* * * * *	
Grain, aspirated fractions	1.5
* * * * *	
Soybean, forage	0.07
Soybean, hay	0.35
Soybean, hulls	0.04
Soybean, seed	0.01
* * * * *	

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[FR Doc. E9–30035 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0385; FRL–8408–1]

Glyphosate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a new tolerance for a plant commodity, and revises other tolerances for glyphosate and its metabolite *N*-acetyl-glyphosate and revises one tolerance for glyphosate *per se*. These changes are detailed in Unit II. of this document. E.I. DuPont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2008–0385. 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: Dan Kenny, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7546; e-mail address: *kenny.dan@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 Get Electronic Access to Other Related Information?

You may 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–2008–0385 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 February 16, 2010.

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–2008–0385, 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. Petition for Tolerance

In the **Federal Register** of June 13, 2008 (73 FR 33817) (FRL–8367–3), 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 7F7307) by E.I. DuPont de Nemours and Company, DuPont Crop Protection, Laurel Run Plaza, P. O. Box 80038, Wilmington, DE 19880–0038. The petition requested that 40 CFR 180.364 be amended by establishing tolerances for combined residues of the herbicide, glyphosate, *N*-(phosphonomethyl)glycine and its metabolite *N*-acetylglyphosate (*N*-acetyl-*N*-(phosphonomthyl)glycine) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate to Optimum™ GAT™ field corn, in or on the food commodities field, corn, grain; field, corn, forage, aspirated grain fractions at levels already established alone. That notice referenced a summary of the petition prepared by E.I. DuPont de Nemours and Company. the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C. DuPont has requested a Section 3 registration under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for the preplant application of the herbicides glyphosate and pyrithiobac sodium to glyphosate tolerant field corn. The petitioner is also working to commercialize a genetically modified field corn designated as Optimum™ GAT™ corn. *N*-acetyl glyphosate is produced when glyphosate is applied to Optimum GAT corn. As a result the petitioner is requesting that the currently established tolerances on field corn commodities be modified accordingly.

Based upon review of the data supporting the petition, EPA has reassigned the currently established tolerances for corn, field, grain at 5.0 parts per million (ppm) and corn, field, forage at 6.0 ppm in paragraph 40 CFR 180.364 (a)(1) to paragraph 40 CFR 180.364 (a)(2). The tolerance expression for paragraph (a)(2) reads ''Tolerances are established for the combined residues of glyphosate, N-(phosophonomethyl)glycine and its metabolite N-acetyl-glyphosate (expressed as glyphosate) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate on the food commodities:''. The Agency is also establishing a tolerance for corn, field, stover at 100 ppm and assigning it to paragraph (a)(2). The Agency is also changing the current commodity definition for the currently established grain, cereal, forage, fodder and straw, group 16, except field corn, forage in paragraph (a)(1) to read: Grain, cereal, forage, fodder, and straw, group 16, except field corn, forage and field corn, stover. The currently established tolerance for grain, aspirated fractions at 310 ppm in paragraph (a)(2) will remain unchanged. 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 glyphosate, *N*-(phosophonomethyl)glycine and its metabolite *N*-acetyl-glyphosate (expressed as glyphosate) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate on the food commodities: corn, field, forage at 6.0 ppm; corn, field, grain at 5.0 ppm; corn, field , stover at 100 ppm; and for the combined residues glyphosate, phosophonomethyl)glycine resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate on the food commodity grain, cereal, forage, fodder, and straw, group 16, except field corn, forage and field corn, stover at 100 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by glyphosate per se and glyphosate and its metabolite *N*-acetyl-glyphosate as well as no-observed-effect-level (NOEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found in the documents in this unit.

The toxicological profile of glyphosate *per se* can be found in the risk

assessments referenced in the final rule published in the **Federal Register** of December 3, 2008 (73 FR 73586) (FRL–8385–7) which establishes tolerances for glyphosate and its metabolite *N*-acetyl-glyphosate in or on cattle, meat byproducts and various other commodities and in the risk assessment referred to in the final rule published in the **Federal Register** of December 20, 2006 (71 FR 76180) (FRL–8105–9) which established tolerances for residues of glyphosate in or on noni at 0.20 ppm and various other commodities. The toxicological profile for the metabolite *N*-acetyl-glyphosate and *N*-acetyl amionomethylphosphonic acid (*N*-acetyl-AMPA), one of the metabolites formed following oral administration of *N*-acetyl-glyphosate can be found in the same rule making documents.

Amendment of the glyphosate corn tolerances to include *N*-acetyl-glyphosate in the tolerance expression does not result in changes in the exposure or risk estimates reported in the previous risk assessments for the reasons listed in this unit and discussed in the Agency review entitled *Glyphosate and Pyrithiobac Sodium. Amended Section 3 Registration to Permit the Rotation to Glyphosate-Tolerant Field Corn and Glyphosate-Tolerant Soybean following Application to Glyphosate-Tolerant Cotton and Revison of the Field Corn Tolerance Expression. Summary of Analytical Chemistry and Residue Data.*, available at www.regulations.gov in Docket ID number EPA–HQ–OPP–2008–0385 and identified as document EPA–HQ–OPP–2008–0385–005.

1. The Agency has determined that *N*-acetyl-glyphosate has no greater toxicity than glyphosate and probably is of lower toxicity.

2. The numerical value of the currently-established tolerances for field corn commodities, livestock and poultry commodities, and feed commodities will remain unchanged.

3. The most recent dietary analysis assumed tolerance level residues and 100 percent crop treated.

4. The estimate of glyphosate in drinking water is based on a glyphosate use involving direct application to water at 3.75 pounds active ingredient per acre. Use of glyphosate on glyphosate-resistant corn will not result in higher levels in drinking water.

Accordingly, based on the risk assessments and findings discussed in the notices referenced in this unit, EPA concludes that no harm will result to the general population and to infants and children from aggregate exposure to the combined residues of glyphosate and its metabolite *N*-acetyl-glyphosate (expressed as glyphosate).

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography (HPLC) with tandem mass spectrometery (MS/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are Codex Maximum Residue Levels (MRLS) established for glyphosate (sum of glyphosate and AMPA) on maize at 5 mg/kg and maize fodder (dry) at 150 mg/kg. A Canadian MRL is established for glyphosate including the metabolite aminomethylphosphonic acid (AMPA) on corn at 3 mg/kg. A Mexican MRL is established for corn at 0.1 mg/kg for glyphosate. The glyphosate tolerances EPA is establishing in this action differ from the tolerance expression for the CODEX, Canadian, or Mexican MRLs, because of the inclusion of *N*-acetyl-glyphosate in the expression. Additionally, the EPA tolerances differ from the CODEX or Canadian MRLs in that the EPA tolerances do not include AMPA in the tolerance expression. At this time, harmonization between the U.S. tolerances and the CODEX, Canadian, or Mexican MRLs can not be achieved because the inclusion of *N*-acetyl-glyphosate in the EPA tolerance expression is necessary to support use patterns in the United States and because EPA has concluded that AMPA it not toxicologically significant and therefore, should not be included in the tolerance expression.

C. Response to Comments

One commenter submitted two comments opposing the use of glyphosate and glyphosate resistant plants which have resulted in the increased use of glyphosate. The commenter also questions the effect of glyphosate on bee colonies. A similar comment concerning effect on bees was received previously and addressed in the notice published in the **Federal Register** on December 3, 2008. EPA does not regulate the effect of herbicide resistant plants on the environment. That function is handled by the United States Department of Agriculture (USDA) Animal and Plant Inspection Service (APHIS). The effect of herbicide resistant plants on the environment is not relevant to EPAs determination of safety of the pesticide glyphosate under section 408 of the FFDCA. The Agency's database on the chemical glyphosate indicates that no harm will result to the general population and to infants and children from aggregate exposure to glyphosate *per se* or from glyphosate and its metabolite N-acetyl-glyphosate as discussed in the final rules and risk assessments referenced in this document. The commenter did not submit any information to support a revision of Agency conclusions.

D. Revisions to Petitioned-For Tolerances

Because the tolerance expression for field corn changes as a result of the inclusion of the metabolite N-acetyl-glyphosate into the expression, the Agency is deleting the currently established tolerances for corn, field, grain (5.0 ppm) and corn, field forage (6.0 ppm) from 40 CFR 180.364 (a)(1) and reestablishing them in 40 CFR 180.364(a)(2) and establishing a tolerance for corn, field, stover at 100 ppm and assigning it to paragraph (a)(2). Because a separate tolerance for corn, field, stover is being established under paragraph (a)(2), the commodity definition for the currently-established grain, cereal, forage, fodder, and straw, group 16, except field corn, forage in paragraph (a)(1) is being changed to read grain, cereal, forage, fodder and straw, group 16, except field corn, forage and field corn, stover. As discussed in the final rule published in the **Federal Register** of December 3, 2008, this change to the tolerance expression for glyphosate as it applies to these field corn commodities will not have any impact on these field corn tolerances in terms of how they apply to glyphosate applied to non-genetically modified field corn.

V. Conclusion

Therefore, tolerances are established for combined residues of glyphosate, *N*-(phosophonomethyl)glycine and its metabolite *N*-acetyl-glyphosate (expressed as glyphosate) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate on the food commodities: Corn, field, forage at 6.0 ppm; corn, field, grain at 5.0 ppm; corn, field , stover at 100 ppm; and for the combined residues glyphosate, phosophonomethyl)glycine resulting from the application of glyphosate, the

isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate on the food commodity grain, cereal, forage, fodder, and straw, group 16, except field corn, forage and field corn, stover at 100 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: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.364 is amended in paragraph (a)(1), in the table, by removing the commodities corn, field, forage; corn, field, grain; and grain, cereal, forage, fodder and straw, group 16, except field corn, forage; and adding the commodity grain, cereal, forage, fodder and straw, group 16, except field corn, forage and field corn, stover; and in paragraph (a)(2), in the table, by alphabetically adding the commodities to read as follows:

§ 180.364 Glyphosate; tolerance for residues.

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

Commodity	Parts per million
* * *	* * *
Grain, cereal, forage, fodder and straw, group 16, except field corn, forage and field corn, stover	100
* * *	* * *

(2) * * *

Commodity	Parts per million
* * *	* *
Corn, field, forage	6.0
Corn field, grain	5.0
Corn, field, stover	100
* * *	* *

* * * * *

[FR Doc. E9–30053 Filed 12–17–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0004; FRL–8796–9]

Rimsulfuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends tolerances for residues of rimsulfuron in or on corn, field, forage and corn, field, stover and establishes tolerances in or on grain, aspirated fractions; soybean, forage; soybean, hay; soybean, hulls; and soybean, seed. E.I du Pont de Nemours and Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 18, 2009. Objections and requests for hearings must be received on or before February 16, 2010, 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–2009–0004. 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:

Mindy Ondish, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0723; e-mail address: *ondish.mindy@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*. To access the OPPTS Harmonized Test Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/oppts* and select ''Test Methods & Guidelines'' in the left side navigation menu.

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–2009–0004 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 February 16, 2010.

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–2009–0004, 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. Petition for Tolerance

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL–8407–4), 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 8F7431 and PP 8F7440) by E.I du Pont de Nemours and Company, Laurel Run Plaza, P.O. Box 80038, Wilmington, DE 19880–0038. The petition requested that 40 CFR 180.478 be amended by establishing tolerances for residues of the herbicide rimsulfuron, *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, in or on corn, aspirated grain fractions at 1.02 parts per million (ppm); corn, field, forage at 0.4 ppm; corn, field grain at 0.01 ppm; and corn, field, stover at 2.5 ppm (PP 8F7440); and soybean, aspirated grain fractions at 4.51 ppm; soybean, forage at 0.25 ppm; soybean, hay at 1.2 ppm; soybean, hulls at 0.035 ppm; and soybean, seed at 0.01 ppm (PP 8F7431). That notice referenced a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has removed the proposed tolerances for corn, aspirated grain fractions at 1.02 ppm and soybean, aspirated grain fractions at 4.51 ppm and has replaced them with a tolerance on grain, aspirated fractions at 4.5 ppm. The tolerance level for soybean, hulls was rounded up from 0.035 ppm to 0.04 ppm. The existing tolerance level for corn, field, grain was maintained at 0.1 ppm to remain harmonized with Mexico's maximum residue limit (MRL). Finally, EPA has revised the tolerance expression for all existing and new rimsulfuron tolerances. 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 residues of rimsulfuron and its metabolites and degradates in or on corn, field, forage at 0.4 ppm; corn, field, stover at 2.5 ppm; grain, aspirated fractions at 4.5 ppm; soybean, forage at 0.25 ppm; soybean, hay at 1.2 ppm; soybean, hulls at 0.04 ppm; and soybean, seed at 0.01 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.

Rimsulfuron has low acute toxicity by oral, dermal, and inhalation routes of exposure. It is a moderate eye irritant and is not a dermal sensitizer. In subchronic and chronic toxicity studies in rats, toxic effects included decreased body weight, decreased body weight gain, increased relative liver and absolute kidney weights, and diuresis. At the higher dosage, decreased liver enzymes and bilirubin, fatty change, and hepatocellular hypertrophy were observed. In the chronic rat study, decreased body weight gain and increased liver weights were observed. At the higher dosage, increased mortality was observed in males. In the subchronic study in mice, increased red blood cell (RBC) and hemoglobin, and decreased body weight gain and food efficiency were observed. In the chronic study in mice, decreased body weight, increased incidences of dilation and cysts in the glandular stomach, and degeneration of the testicular artery and tunica albuginea were observed. In the subchronic study in dogs, diuresis was indicated by urinary volume, platelet concentration and kidney weights accompanied by decreased urinary osmolality. In the chronic study in dogs, increased absolute liver and kidney weights, increased seminiferous tubule degeneration, and increased number of spermatid giant cells present in epididymides in males were observed. At the higher dosage, decreased mean body weight, decreased body weight gain, as well as increases in serum cholesterol levels, alkaline phosphatase activity, absolute liver, and relative liver and kidney weights were observed.

In the developmental toxicity study in rats, no toxicity was seen at the highest dose tested. In the developmental toxicity study in rabbits, and in the 2–generation reproduction toxicity study in rats, developmental/offspring toxicity was seen in the presence of maternal/systemic toxicity and at similar dose levels. There is no quantitative or qualitative evidence of increased susceptibility following pre- and/or postnatal exposures, and there are no concerns or residual uncertainties.

There was no evidence of potential immunotoxicity or neurotoxicity in the submitted studies.

Rimsulfuron was classified by EPA as a ''not likely'' human carcinogen based on the lack of evidence of carcinogenicity in studies conducted in rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by rimsulfuron 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 ''Rimsulfuron Human Health Risk Assessment for Proposed Section 3 Uses on Genetically Modified Field Corn and Soybean'' , page 28 in docket ID number EPA–HQ–OPP–2009–0004.

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*.

A summary of the toxicological endpoints for rimsulfuron used for human risk assessment can be found at *http://www.regulations.gov* in document ''Rimsulfuron Human Health Risk Assessment for Proposed Section 3 Uses on Genetically Modified Field Corn and Soybean'' , page 18 in docket ID number EPA–HQ–OPP–2009–0004.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to rimsulfuron, EPA considered exposure under the petitioned-for tolerances as well as all existing rimsulfuron tolerances in 40 CFR 180.478. EPA assessed dietary exposures from rimsulfuron 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.

No such effects were identified in the toxicological studies for rimsulfuron;

therefore, a quantitative acute dietary exposure assessment is unnecessary.

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 assumed tolerance-level residues and 100 percent crop treated (PCT) for all existing and new uses of rimsulfuron.

iii. *Cancer*. Based on the lack of evidence of carcinogenicity observed in the 2–year rat and 18–month mouse carcinogenicity studies, EPA classified rimsulfuron as a ''not likely'' human carcinogen. Therefore, an exposure assessment for evaluating cancer risk is not needed for this chemical.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue or PCT information in the dietary assessment for rimsulfuron. Tolerance level residues and 100 PCT were assumed for all food commodities.

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of rimsulfuron for acute exposures are estimated to be 5.596 parts per billion (ppb) for surface water and 0.016 ppb for ground water; and for chronic exposures are estimated to be 0.120 ppb for surface water and 0.016 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 0.120 ppb was used to assess the contribution to drinking water. The surface water value was used in the chronic dietary assessment since it was higher than the groundwater value and, therefore, more protective. The acute surface water value is not relevant to this dietary assessment, as a toxic effect attributable to a single dose has not been identified for rimsulfuron. The cancer dietary risk assessment is also not relevant due to the lack of evidence of carcinogenicity in the conducted rat and mice toxicity studies.

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).

Rimsulfuron is not registered for any specific use patterns that would result in residential exposure.

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 rimsulfuron to share a common mechanism of toxicity with any other substances, and rimsulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that rimsulfuron 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 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*. In the developmental toxicity in rats, no developmental toxicity was seen at the highest dose tested. In the developmental toxicity study in rabbits, and in the 2–generation study in rats, developmental/offspring toxicity was seen in the presence of maternal/systemic toxicity. In the rabbit study, fetal effects (production of only two viable fetuses) occurred at a higher dose (1,500 mg/kg/day) than the dose (500 mg/kg/day) resulting in maternal toxicity (death and reduced weight gain). In the reproduction study offspring effects (decreased mean body weight in F1 males, decreased body weight gain in F1 females, and decreased daily food consumption in F1 males) also occurred at a higher dose (1,316 mg/kg/day) than the dose (M: 830 mg/kg/day; F: 1,021 mg/kg/day) resulting in parental/systemic toxicity (decreased body weight gain in males and females). Consequently, there is no quantitative or qualitative evidence of increased susceptibility following pre- and/or postnatal exposure to rimsulfuron.

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 1X. That decision is based on the following findings:

i. The toxicity database for rimsulfuron is adequate to assess potential for pre- and/or postnatal toxicity. In accordance with part 158 Toxicology Data requirements, an immunotoxicity study (870.7800), and acute and subchronic neurotoxicity studies (870.6200) are required for rimsulfuron. Despite the absence of specific immunotoxicity and neurotoxicity studies, EPA has evaluated the available toxicity data and has determined that there is no evidence that rimsulfuron either causes neurotoxic effects or directly targets the immune system, and, therefore, an additional UF is not needed to account for the lack of these studies.

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

iii. There is no evidence that rimsulfuron 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.

iv. There are no residual uncertainties identified in the exposure databases. The chronic dietary food exposure assessments were performed based on 100% PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to rimsulfuron in drinking water. Residential exposure is not expected for rimsulfuron. These assessments will not underestimate the exposure and risks posed by rimsulfuron.

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-, intermediate-, 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. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, rimsulfuron is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to rimsulfuron from food and water will utilize <1% of the cPAD for the general population and all population subgroups, including children 1-2 years old, the population group receiving the greatest exposure. There are no residential uses for rimsulfuron.

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

Rimsulfuron is not registered for any use patterns that would result in residential exposure. Therefore, the short-term aggregate risk is the sum of the risk from exposure to rimsulfuron through food and water and will not be greater than the chronic aggregate risk.

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

Rimsulfuron is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to rimsulfuron through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. Based on a lack of evidence for carcinogenicity in mice and rats following long-term dietary administration, rimsulfuron is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography with ultraviolet (HPLC/UV) detection method AMR-1241-88) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are currently no established or proposed Codex maximum residue limits (MRLs) for residues of rimsulfuron. There are Canadian MRLs for rimsulfuron residues on tomatoes and blueberries, and Mexican tolerances for residues on potatoes, tomatoes, and corn. The Mexican tolerance for corn (0.1 mg/kg) is identical to the existing U.S. tolerance for corn grain and harmonization will be maintained.

C. Revisions to Petitioned-For Tolerances

The proposed tolerances on corn, aspirated grain fractions at 1.02 ppm and soybean, aspirated grain fractions at 4.51 ppm have been revised to grain, aspirated fractions at 4.5 ppm. Rimsulfuron residues were shown to concentrate in aspirated grain fractions (AGF) in both corn grain and soybean seed. As the residues in soybean AGF are higher than in corn AGF, the tolerance was established at 4.5 ppm based on the soybean residue data. The proposed tolerance for soybean, hulls at 0.035 ppm was rounded up to 0.04 ppm. The tolerance level for corn, field, grain was maintained at 0.1 ppm, rather than the proposed 0.01 ppm, to remain harmonized with the MRL in Mexico.

EPA has also revised the tolerance expression for all existing and new rimsulfuron tolerances. The revised tolerance expression makes clear that the tolerances cover ''residues of rimsulfuron, including its metabolites and degradates'' and that compliance with the tolerance levels will be determined by measuring only rimsulfuron, *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide. EPA has determined that it is reasonable to make this change in the tolerance expression final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance, but rather is merely intended to clarify the existing tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of rimsulfuron, including its metabolites and degradates, in or on corn, field, forage at 0.4 ppm; corn, field, stover at 2.5 ppm; grain, aspirated fractions at 4.5 ppm; soybean, forage at 0.25 ppm; soybean, hay at 1.2 ppm; soybean, hulls at 0.04 ppm; and soybean, seed at 0.01 ppm. Compliance with these tolerance levels will be determined by measuring only rimsulfuron, N-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, in or on the commodities.

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: December 8, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.478 is amended in paragraph (a) by revising the introductory text, by revising the entries for Corn, field, forage and Corn, field, stover, and by alphabetically adding entries for Grain, aspirated fractions; Soybean, forage; Soybean, hay; Soybean, hulls; and Soybean, seed to the table to read as follows:

§ 180.478 Rimsulfuron; tolerances for residues.

(a) *General*. Tolerances are established for residues of the herbicide rimsulfuron, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only rimsulfuron, N-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide), in or on the commodities.

Commodity	Parts per million
* * *	* *
Corn, field, forage	0.4
* * *	* *
Corn, field, stover	2.5
* * *	* *
Grain, aspirated fractions	4.5
* * *	* *
Soybean, forage	0.25
Soybean, hay	1.2
Soybean, hulls	0.04
Soybean, seed	0.01
* * *	* *

* * * * *

[FR Doc. E9–30045 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 090428799–9802–01]

RIN 0648–XT30

Magnuson-Stevens Act Provisions; Fisheries Off West The Coast States; Pacific Coast Groundfish Fishery; Pacific Whiting Allocation; Pacific Whiting Seasons

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

ACTION: Temporary rule; reapportionment of surplus Pacific whiting allocation; request for comments.

SUMMARY: This document announces the reapportionment of 1,325 mt of Pacific whiting from the shore-based sector to the catcher/processor sector.

DATES: The reapportionment of whiting is effective from 1200 local time (l.t.) December 7, 2009, until December 31, 2009, unless modified, superseded or rescinded. Comments will be accepted through January 4, 2010.

ADDRESSES: You may submit comments, identified by 0648–XT30 and submitted by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Fax: 206–526–6737, Attn: Becky Renko
- Mail: Barry A. Thom, Acting Administrator, Northwest Region, NMFS, Attn: Becky Renko, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko, Northwest Region, NMFS, at 206 526 6110.

SUPPLEMENTARY INFORMATION:

Electronic Access

This notice is accessible via the Internet at the Office of the **Federal Register**'s Website at *http://www.gpoaccess.gov/fr/index.html*.

Background

This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management

Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California.

Regulations at 50 CFR 660.323(a)(2) divide the commercial Pacific whiting OY into separate allocations for the catcher/processor, mothership, and shore-based sectors. Each commercial sector receives a portion of the commercial OY. Regulations at 50 CFR 660.323 (c) provide for the reapportionment of Pacific whiting that the Regional Administrator determines will not be used during the year.

The shore-based sector was closed on July 7, 2009 (July 28, 2008; 74 FR 37176). The best available information on July 6, 2009 indicated that the 42,063 mt allocation for the shore-based sector would be reached by 10:00 a.m. on July 7, 2009. Data received after the closure indicated that the fishing rates slowed considerably in the last few days of the fishery, resulting in 1,382 mt of unharvested shore-based allocation.

This document announces the reapportionment of 1,325 mt of shore-based allocation to the catcher/processor sector resulting in the following commercial allocations for 2009: catcher/processor 35,376 mt, mothership 24,034 mt, and shore-based 40,738 mt. Facsimiles directly to fishing businesses and postings on the Northwest Regions internet site were used to provide actual notice to the affected fishers.

Classifications

The determinations to take these actions were based on the most recent data available. The aggregate data upon which the determinations were based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours.

This action is authorized by the regulations implementing the FMP. The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on these actions pursuant to 5 U.S.C. 553 (3)(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because of the need for immediate action. NMFS has determined that providing an opportunity for prior notice and comment would be impractical and contrary to public interest. Delay of this action would leave Pacific whiting unharvested. In addition, the catcher/processors needed an immediate reallocation if they were to keep their workers employed. For these same reasons the agency finds good cause to waive the 30–day delay in effectiveness. These actions are taken under the authority of 50 CFR 660.323(c), and are exempt from review under Executive Order 12866. Actual notice of the reapportionments was provided to the affected fishers.

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

Dated: December 15, 2009.

Emily H. Menashes,

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

[FR Doc. E9–30175 Filed 12–17–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0912011420–91423–01]

RIN 0648–AY39

Fisheries of the Exclusive Economic Zone Off Alaska, Steller Sea Lions; Correction

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

ACTION: Correcting amendments.

SUMMARY: This action makes a correction to regulations at 50 CFR part 679. It corrects a final rule that erroneously removed regulations in 50 CFR part 679 concerning the harvest limit area for Atka mackerel in the Aleutian Islands. NMFS intended this final rule to modify regulations detailing management of Atka mackerel total allowable catch. However, due to incorrect instructions in the regulatory text, NMFS inadvertently removed the regulations governing Atka mackerel management in the harvest limitation area. This correcting amendment reinstates those regulations.

DATES: Effective December 18, 2009.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI) are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

NMFS has determined that an error exists in the regulations at § 679.20(a)(8)(ii). This final rule will correct an error that resulted when NMFS inadvertently removed regulations that govern the maximum amount of Atka mackerel total allowable catch (TAC) that may be taken from the harvest limitation area (HLA) in the BSAI. NMFS published a final rule implementing HLA regulations on January 2, 2003 (68 FR 204), to ensure that fishery management of Atka mackerel in the BSAI is not likely to jeopardize the continued existence or adversely modify or destroy designated critical habitat for the Endangered Species Act (ESA)-listed western distinct population segment of Steller sea lions (*Eumetopias jubatus*). These regulations primarily focused on spatial and temporal harvest restrictions on Steller sea lion prey species, including Atka mackerel.

On September 14, 2007, NMFS published a final rule that attempted to modify regulations at 50 CFR 679.20(a)(8)(ii) to clarify the allocation of Atka mackerel between non-American Fisheries Act trawl catcher/processors, commonly known as the Amendment 80 sector, and other trawl vessels, commonly known as the BSAI trawl limited access sector (72 FR 52668). It was NMFS's intent to modify only regulations in the introductory text at § 679.20(a)(8)(ii) to address the allocation of Atka mackerel between the Amendment 80 sector and the BSAI trawl limited access sector, and not regulations in § 679.20(a)(8)(ii)(A) through (C) that established spatial and temporal harvest restrictions. However, the instructional text in the final rule published on September 14, 2007, inadvertently removed regulations in § 679.20(a)(8)(ii)(A) through (C) (72 FR 52719). NMFS's intent to keep regulations in § 679.20(a)(8)(ii)(A) through (C) intact was indicated in the preamble to the September 14, 2007, final rule in response to a public comment. NMFS stated that ''NMFS did not propose regulations that would have modified existing regulations concerning management of Atka mackerel in the HLA as part of the [*September 14, 2007 final rule*]. NMFS will manage the HLA fisheries in compliance with existing regulations.'' (72 FR 52705). This correcting amendment corrects the inadvertent removal of regulations in § 679.20(a)(8)(ii)(A) through (C), and reinstates them.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Acting Assistant Administrator of Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment, as notice and comment would be impracticable and contrary to the public interest. Through this action, NOAA seeks to correct the inadvertent removal of regulations in § 679.20(a)(8)(ii)(A) through (C), and reinstate them. Prior notice and an opportunity for public comment on this action would be impracticable and contrary to the public interest for the following reasons. Corrections to ensure the rule's compliance with the intent of the HLA Program must be made immediately since establishing limits on Atka mackerel fishing in the HLA is critical for conservation and management of the groundfish fisheries off Alaska and for assessing the impact of these fisheries on other aspects of the marine environment. Failure to limit Atka mackerel fishing in the HLA would be inconsistent with management measures designed to avoid jeopardizing the continued existence and adverse modification of designated critical habitat for Steller sea lions as required under the ESA. Fishing in the HLA fishery is ongoing, and the lack of limitations in the HLA could result in greater harvest of Atka mackerel by vessels than allowed under current Steller sea lion management measures. Failure to limit fishing in the HLA would remove limitations on vessels that are currently constrained by those limitations and would provide an incentive for increased harvests in the HLA. As such, prior notice and an opportunity for public comment on these measures are impracticable and contrary to the public interest because NMFS only recently discovered these errors and must ensure the uninterrupted, comprehensive and rational management of the fisheries consistent with the MSA and ESA.

Additionally, for the reasons listed above, the AA finds good cause to waive the 30–day delay in the effective date under 5 U.S.C. 553(d)(3), as such procedures would be contrary to the public interest. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

The Acting AA for NMFS has determined that this action is consistent with the MSA and other applicable law.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 14, 2009.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 50 CFR part 679 is corrected as follows:

PART 679–FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 2. In § 679.20, revise paragraph (a)(8)(ii) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(8) * * *

(ii) *ITAC allocation to Amendment 80 and BSAI trawl limited access sectors.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation, CDQ reserve, and incidental catch allowance for the BSAI trawl limited access sector and vessels using non-trawl gear, will be allocated as ITAC to the Amendment 80 and BSAI trawl limited access sectors.

(A) *Seasonal Allowances.* The Atka mackerel TAC specified for each subarea or district will be divided equally, after subtraction of the jig gear allocation and reserves, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

(B) *Overages and Underages.* Within any fishing year, unharvested amounts of the A season allowance will be added to the B season allowance and harvests in excess of the A season allowance will be deducted from the B season allowance.

(C) *Harvest limit area (HLA) limits.* Atka mackerel harvest is limited in the HLA, as defined in § 679.2, as follows:

(*1*) For the HLA, the Regional Administrator will establish an HLA harvest limit of no more than 60 percent of the seasonal TAC as specified in paragraph (a)(8)(ii)(A) of this section.

(*2*) *CDQ fishing.* A CDQ group is prohibited from exceeding the CDQ portion of the percentage of annual Atka mackerel in areas 542 and/or 543 specified in paragraph (a)(8)(ii)(C)(*1*) of this section for the HLA.

* * * * *

[FR Doc. E9–30181 Filed 12–17–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 242
Friday, December 18, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1063; Airspace Docket No. 09–ANM–22]

Proposed Amendment of Class E Airspace; Hoquiam, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Hoquiam, WA. Controlled airspace would be amended to have Class E surface area airspace continuous at Bowerman Airport, Hoquiam, WA. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport. This action also would correct the airport name.

DATES: Comments must be received on or before February 1, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1063; Airspace Docket No. 09–ANM–22, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2009–1063 and Airspace Docket No. 09–ANM–22) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–1063 and Airspace Docket No. 09–ANM–22''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace at Bowerman Airport, Hoquiam, WA. The controlled surface area airspace would be continuous, thereby removing the specific dates and times as stated in advance by a Notice to Airmen. This action would enhance the safety and management of aircraft operations at Bowerman Airport, Hoquiam, WA. This action also would correct the airport name from Bowerman Field to Bowerman Airport.

Class E airspace designations are published in paragraph 6002, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII,

Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Bowerman Airport, Hoquiam, WA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WA E2 Hoquiam, WA [Amended]

Bowerman Airport, WA

(Lat. 46°58′16″ N., long. 123°56′12″ W.)

Within a 4-mile radius of Bowerman Airport, and within 3.5 miles each side of the Bowerman Airport 081° bearing extending from the 4-mile radius to 8.4 miles east of Bowerman Airport, and within 1.4 miles each side of the Bowerman Airport 261° bearing extending from the 4-mile radius to 8.8 miles west of Bowerman Airport.

* * * * *

Issued in Seattle, Washington, on December 9, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–30180 Filed 12–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0916; Airspace Docket No. 09–ACE–12]

Proposed Amendment of Class E Airspace; Cedar Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Cedar Rapids, IA. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at The Eastern Iowa Airport, Cedar Rapids, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: 0901 UTC. Comments must be received on or before February 1, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0916/Airspace Docket No. 09–ACE–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0916/Airspace Docket No. 09–ACE–12.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking at 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace designated as surface areas for SIAPs at The Eastern Iowa Airport, Cedar Rapids, IA. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6002 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant

regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at The Eastern Iowa Airport, Cedar Rapids, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6002 Class E Airspace designated as surface areas.

* * * * *

ACE IA E2 Cedar Rapids, IA [Amended]

Cedar Rapids, The Eastern Iowa Airport, IA

(Lat. 41°53′05″ N., long. 91°42′39″ W.)

Within a 5-mile radius of The Eastern Iowa Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on December 4, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–30187 Filed 12–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0934; Airspace Docket No. 09–ASW–29]

Proposed Amendment of Class E Airspace; Georgetown, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Georgetown, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Georgetown Municipal Airport, Georgetown, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Georgetown Municipal Airport.

DATES: 0901 UTC. Comments must be received on or before February 1, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0934/Airspace Docket No. 09–ASW–29, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0934/Airspace Docket No. 09–ASW–29.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking at (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs

operations at Georgetown Municipal Airport, Georgetown, TX. Adjustments to the geographic coordinates would be made in accordance with the FAAs National Aeronautical Charting Office. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Georgetown Municipal Airport, Georgetown, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

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

* * * * *

ASW TX E5 Georgetown, TX [Amended]

Georgetown Municipal Airport, TX
(Lat. 30°40′44″ N., long. 97°40′46″ W.)
Georgetown NDB
(Lat. 30°41′04″ N., long. 97°40′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Georgetown Municipal Airport, and within 2.5 miles each side of the 359° bearing from the Georgetown NDB extending from the 6.5-mile radius to 7.4 miles north of the airport, and within 2.2 miles each side of the 301° bearing from the airport extending from the 6.5-mile radius to 9.7 miles northwest of the airport, and within 2 miles each side of the 003° bearing from the airport extending from the 6.5-mile radius to 10.3 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on December 7, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–30195 Filed 12–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1057; Airspace Docket No. 09–AWP–9]

Proposed Establishment of Class E Airspace; Battle Mountain, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Battle Mountain Airport, Battle Mountain, NV, to accommodate aircraft using the VHF Omni-Directional Radio Range (VOR)/Distant Measuring Equipment (DME) Standard Instrument Approach Procedures (SIAPs) at the airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at Battle Mountain Airport, Battle Mountain, NV.

DATES: Comments must be received on or before February 1, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1057; Airspace Docket No. 09–AWP–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2009–1057 and Airspace Docket No. 09–AWP–9) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–1057 and Airspace Docket No. 09–AWP–9''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish Class E surface airspace at Battle Mountain Airport, Battle Mountain, NV. Controlled airspace is necessary to accommodate aircraft using the VOR/DME SIAPs at Battle Mountain Airport. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Battle Mountain Airport, Battle Mountain, NV.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AWP NV E2 Battle Mountain, NV [New]

Battle Mountain Airport, NV
(Lat. 40°35′57″ N., long. 116°52′28″ W.)

Within a 4.2-mile radius of Battle Mountain Airport, and within 1.4 miles each side of the 218° bearing extending from the 4.2-mile radius to 7.4 miles southwest of the Battle Mountain Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on December 9, 2009.

H. Steve Karnes,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–30182 Filed 12–17–09; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 232, 240, 249, and 274

[Release Nos. 33–9086; 34–61161; IC–29069; File No. S7–10–09]

RIN 3235–AK27

Facilitating Shareholder Director Nominations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; re-opening of comment period.

SUMMARY: In June 2009, the Securities and Exchange Commission proposed changes to the federal proxy rules in ''Facilitating Shareholder Director Nominations,'' Release Nos. 33–9046; 34–60089; IC–28765; File No. S7–10–09 (June 10, 2009), 74 FR 29024 (June 18, 2009) (the ''Proposal''). The Commission is re-opening the comment period to permit interested persons to comment on additional data and related analyses that have been included in the public comment file.

DATES: Comments should be received on or before January 19, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–10–09 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–10–09. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). These comments also are available for Web site viewing and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Lillian Brown or Tamara Brightwell, Division of Corporation Finance, at (202) 551–3200, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–4553.

SUPPLEMENTARY INFORMATION: In June 2009, the Commission proposed changes to the federal proxy rules that would require a company, under certain circumstances, to include in the company's proxy statement disclosure concerning a shareholder's, or group of shareholders', nominees for director and to include on the company proxy card the names of those nominees.[1] In addition, the proposed rules would require companies to include in their proxy materials, under certain circumstances, shareholder proposals that would amend, or that request an amendment to, a company's governing documents regarding nomination procedures or disclosures related to shareholder nominations, provided the shareholder proposal does not conflict with the Commission's disclosure rules, including the proposed new rules. The Commission also proposed changes to certain of our other rules and regulations, including the existing exemptions from the proxy rules and the beneficial ownership reporting requirements. The Proposal was published for comment in the **Federal Register** on June 18, 2009, and the initial comment period closed on August 17, 2009.

In connection with the Proposal, a variety of data and related analyses have been submitted and included in the public comment file,[2] including data and related analysis by Commission staff. A portion of that data and the related analyses were submitted or added to the public comment file at or after the close of the initial comment period. The Commission is re-opening the comment period to allow interested persons to comment on the additional data and analyses in the public comment file, including the following materials:

• *Report on Effects of Proposed SEC Rule 14a–11 on Efficiency, Competitiveness and Capital Formation, in Support of Comments by Business Roundtable,* NERA Economic Consulting (submitted on August 17, 2009 by the Business Roundtable);

• *Why Did Some Banks Perform Better During the Credit Crisis? A Cross-Country Study of the Impact of Governance and Regulation,* Andrea Beltratti and Rene M. Stulz (submitted on September 11, 2009 by the Business Roundtable);

• *The Limits of Private Ordering: Restrictions on Shareholders' Ability to Initiate Governance Change and Distortions of the Shareholder Voting Process,* The Corporate Library (submitted on November 18, 2009 by the Shareowner Education Network and the Council of Institutional Investors); and

• Supplemental analysis of share ownership and holding period patterns from Form 13F data by the Commission's Division of Risk, Strategy, and Financial Innovation, dated November 24, 2009.

The Commission is re-opening the comment period for the Proposal with regard to the additional data and related analyses for thirty days from the date of publication of this release in the **Federal Register**.

By the Commission.

Dated: December 14, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30076 Filed 12–17–09; 8:45 am]

BILLING CODE 8011–01–P

[1] *Facilitating Shareholder Director Nominations,* Release Nos. 33–9046; 34–60089; IC–28765; File No. S7–10–09 (June 10, 2009) [74 FR 29024].

[2] *See* Comment File No. S7-10-09, available at *http://www.sec.gov/comments/s7-10-09/s71009.shtml.*

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN21

Specially Adapted Housing and Special Home Adaptation

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations regarding specially adapted housing and special home adaptation grants. The proposed regulations would incorporate certain provisions from the Veterans Benefits Act of 2003, the Veterans Benefits Improvement Act of 2004, the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, and the Housing and Economic Recovery Act of 2008. The proposed amendments are necessary to conform the regulations to the statutory provisions.

DATES: Comments must be received by VA on or before February 16, 2010.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AN21—Specially Adapted Housing and Special Home Adaptation.'' Copies of 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 for an appointment. This is not a toll-free number. 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: Thomas Kniffen, Chief, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–9739. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The following public laws revised VA's statutes regarding specially adapted housing and special home adaptation

grants: The Veterans Benefits Act of 2003, Public Law 108–183; the Veterans Benefits Improvement Act of 2004, Public Law 108–454; the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, Public Law 109–233; and the Housing and Economic Recovery Act of 2008, Public Law 110–289. To ensure consistency with statutory changes, we propose to amend VA's regulations addressing eligibility for specially adapted housing, 38 CFR 3.809, and special home adaptation, 38 CFR 3.809a.

Benefits for Members of the Armed Forces

Section 401 of the Veterans Benefits Act of 2003 added subsection (c) to 38 U.S.C. 2101, authorizing VA to provide specially adapted housing grants under section 2101(a) and special home adaptations under section 2101(b) to members of the Armed Forces serving on active duty who have a qualifying disability. This authorization is effective on December 16, 2003. However, section 401 of the Veterans Benefits Improvement Act of 2004, which significantly reorganized 38 U.S.C. 2101, did not retain the authority to provide these benefits to active duty servicemembers. There is no indication in the legislative history of the Act that Congress intended to eliminate eligibility for specially adapted housing and special home adaptation for members of the Armed Forces serving on active duty.

Further, section 105 of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006, as a technical correction, re-inserted into section 2101 subsection (c) as added by the Veterans Benefits Improvement Act of 2003 and then made amendments to that subsection. The effective date is December 10, 2004, the effective date of the amendment made by the Veterans Benefits Improvement Act of 2004. Because the benefits were made available as of December 16, 2003, by the Veterans Benefits Act of 2003, this effective date provision in the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 essentially means that the erroneous removal by the Veterans Benefits Improvement Act of 2004 of the language authorizing benefits for active duty servicemembers did not occur. Therefore, we propose to amend §§ 3.809 and 3.809a to incorporate the authority to grant eligibility for these benefits to active duty servicemembers.

Section 2602 of the Housing and Economic Recovery Act of 2008 created new 38 U.S.C. 2101A for eligibility for specially adapted housing and special home adaptations for members of the Armed Forces who are serving on active duty. The provisions extending eligibility for these benefits to such active duty members of the Armed Forces were moved from 38 U.S.C. 2101 to the new section 2101A. No substantive changes were made to the provisions. We would cite the new section as the statutory authority for our regulations.

38 U.S.C. 1151

Section 304(a) of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1151, Benefits for persons disabled by treatment or vocational rehabilitation, by adding subsection (c). Subsection (c) states that a qualifying additional disability under section 1151 shall be treated as if it were a service-connected disability for purposes of chapter 21 benefits (specially adapted housing) and chapter 39 benefits (automobiles and adaptive equipment). This is an expansion of the benefits to which veterans disabled by VA treatment or vocational rehabilitation are eligible. This statutory amendment to 38 U.S.C. 1151 is applicable with respect to eligibility for these benefits and services provided by VA on or after December 10, 2004. Public Law 108–454, § 304(b), 118 Stat. 3598, 3611. VA incorporated these changes in its regulation regarding automobiles and adaptive equipment, 38 CFR 3.808, by final rulemaking published August 8, 2006, at 71 FR 44915. We now propose to amend §§ 3.809 and 3.809a to reflect the statutory changes.

VA believes that Congress intended the reference in 38 U.S.C. 1151(c)(1) to ''Chapter 21, relating to specially adapted housing,'' to include both specially adapted housing under 38 U.S.C. 2101(a) and special home adaptation grants under 38 U.S.C. 2101(b), based upon the following analysis. The comma between ''Chapter 21'' and ''relating to specially adapted housing'' in section 1151(c)(1) suggests that the latter phrase is intended merely to describe the content of the chapter rather than to impose a limitation referring to specific provisions in the chapter. In fact, the heading for chapter 21 of title 38, United States Code, which includes both the provisions authorizing specially adapted housing and the provisions authorizing special home adaptation grants, was, when Public Law 108–454 amended section 1151, and still is ''Specially Adapted Housing for Disabled Veterans.'' Clearly, Congress intended the phrase ''specially adapted housing'' to comprise both benefits. Also, it is a rule of statutory construction that statutory provisions are to be read together. *See, e.g., Coit Independence Joint Venture* v. *Fed. Sav. & Loan Ins. Corp.,* 489 U.S. 561, 573 (1989). In addition to adding subsection (c) to 38 U.S.C. 1151, section 304 of the Veterans Benefits Improvement Act of 2004 added paragraph (2) to 38 U.S.C. 1151(b), which refers to chapter 21 benefits generally. Reading section 1151(b)(2) and (c) together, we interpret the reference in section 1151(c)(1) to include all chapter 21 benefits, *i.e.,* special home adaptation grants as well as specially adapted housing.

As stated, section 304(c) of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 1151(b) by adding paragraph (2). New section 1151(b)(2) provides that, if a judgment, settlement, or compromise of a claim includes an amount specifically designated for a purpose for which benefits are provided under chapter 21 or 39 of title 38, United States Code, and after the judgment, settlement, or compromise becomes final, VA awards benefits under chapter 21 or 39 for the purpose for which the amount was designated, VA must reduce the amount of the chapter 21 or 39 benefits payable by the amount specifically designated for these purposes in the judgment, settlement, or compromise. Section 1151(b)(2) applies to a judgment, settlement, or compromise that became final on or after December 10, 2004. Section 1151(b)(2) also requires that, if the specifically designated amount received as a result of the judgment, settlement, or compromise is greater than the amount of the chapter 21 or 39 benefits awarded, the excess amount received will be offset against benefits otherwise payable under 38 U.S.C. chapter 11. In a final rulemaking published August 8, 2006, at 71 FR 44915, VA incorporated these statutory changes for chapter 39 benefits by amending 38 CFR 3.362, Offset under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a), for claims filed on or after October 1, 1997, and by amending 38 CFR 3.800, Disability or death due to hospitalization, etc., for claims filed before October 1, 1997. We now propose to amend §§ 3.362(e) and 3.800(a)(4) to reflect the statutory changes regarding chapter 21 benefits. We additionally propose to expand current references to ''chapter 39'' in §§ 3.362(e) and 3.800(a)(4) to ''38 U.S.C. chapter 39'' for the purposes of clarity and consistency. We intend no substantive change with this proposed amendment.

Loss, or Loss of Use, of Upper Extremities

Section 401 of the Veterans Benefits Improvement Act of 2004 amended 38 U.S.C. 2101, authorizing specially adapted housing and home adaptation grants for disabled veterans and active duty service members, by adding ''the loss, or loss of use, of both upper extremities such as to preclude use of the arms at or above the elbows'' as a qualifying disability under 38 U.S.C. 2101(a). We propose to amend § 3.809 by adding § 3.809(b)(5) to reflect the amendment to section 2101.

Typographical Error

We propose to amend paragraph (4) of § 3.809(b) by correcting a typographical error in the current phrase ''loss of loss of use''. The phrase throughout paragraph (4) should read ''loss or loss of use''. We additionally propose to amend paragraphs (3) and (4) of § 3.809(b) by removing the periods at the end of those paragraphs and replacing them with '', or''. Section 2101(a) provides eligibility for veterans with disability that meets any of the criteria listed in section 2101(a)(2)(A) through (E). The current omission of an ''or'' at the end of § 3.809(b)(3) is an unintentional typographical error. Our amendments will adequately reflect the statute, and we intend no substantive change.

Loan Guaranty Service

Section 101(b) of the Veterans' Housing Opportunity and Benefits Improvement Act of 2006 amended 38 U.S.C. 2102 to allow three separate grants of assistance under chapter 21. Prior to the amendment, the benefit was a one-time benefit. We would also remove from §§ 3.809 and 3.809a the provisions regarding how often the benefit is available. Specially adapted housing and special home adaptation grants are administered by VA's Loan Guaranty Service, although the Loan Guaranty Service relies on the Veterans Service Centers' determinations of disability to determine eligibility. There is currently a cross-reference in § 3.809 to the Loan Guaranty Service regulations regarding specially adapted housing. We propose to add this same cross-reference to § 3.809a. We believe that a cross-reference to the more comprehensive regulations pertaining to Specially Adapted Housing is appropriate here.

Severe Burns

Section 2603 of the Housing and Economic Recovery Act of 2008 amended 38 U.S.C. 2101 by adding ''a severe burn injury'' to the list of qualifying disabilities for specially adapted housing and special home adaptation. The specific type of burn injury is to be determined by the Secretary of Veterans Affairs. We further propose to amend §§ 3.809 and 3.809a to comply with 38 U.S.C. 2101.

The skin provides protection against fluid and electrolyte loss, infection, and radiation, and also provides thermal regulation. Through skin contact, an individual is able to obtain information about the surrounding environment via touch, perception of temperature, and pain. In addition, skin appearance affects identity and interpersonal interactions.

The skin is composed of two layers: the epidermis and the dermis. The major functions of the epidermis are to keep fluid in and protect against infection. The dermis provides the strength and flexibility of the skin. It also has the vascular and neural plexus. The vascular plexus is vital for temperature control, and the neural plexus gives the skin the ability to sense the environment.

There are five types of burns defined by the amount of damage to the epidermis and dermis. Our proposed amendment would not include superficial or superficial partial burns because they heal without residuals. The remaining types of burns are deep partial, full-thickness, and subdermal. For the reasons outlined below, we propose to consider these types of burns to allow eligibility for specially adapted housing.

In the deep partial burn, there is complete destruction of the epidermis and severe damage to the dermal layer. Healing occurs with hypertrophic scars and keloids.

In the full-thickness burn, there is complete destruction of the epidermis and dermis; there may also be some damage to the underlying subcutaneous fat layer. Skin grafts are necessary for this type of burn.

In the subdermal burn, there is complete destruction from the epidermis down to and including the subcutaneous fat. In addition, muscle and bone may be damaged. Extensive surgery is required for this type of burn including the possibility of amputation.

The skin that has experienced the types of burns defined above (deep partial, full-thickness, and subdermal) is never restored to normal. Scar epithelium (skin) is thin, fragile, and prone to chronic ulceration. Scars resulting from these burns cause disfigurement. Residuals of these scars include loss of sweat gland function and nail growth, pigment formation, sensory changes, physical limitations such as cold and heat intolerance, difficulty with sun exposure, altered sensation, and painful scars. Skin grafts have the same abnormalities.

The most frequent cause of impairment is burn scar contracture. This residual prohibits movement of a joint in its normal range of motion and influences not only the underlying joint but also the adjacent joints. Burn scar contracture is not only limited to the extremities but can occur as a result of burns to the trunk, resulting in postural or respiratory impairments.

VA worked with military hospital resources to assess burn disabilities for adaptive housing. In doing so, we have determined that a severe burn injury is considered at least a deep partial thickness burn. After a burn of at least this depth heals, the skin is no longer capable of its normal function, requiring housing adaptation such as temperature control and modified handles. Burns that are less severe heal without scarring.

Our proposed amendments would provide that, for specially adapted housing in § 3.809, the criteria for eligibility are that the veteran or active duty service member must have full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk.

For special home adaptation grants under § 3.809a, the proposed eligibility criteria are that the veteran or active duty service member must have deep partial thickness burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk, full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk, or residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease).

We are proposing the additional eligibility criterion of residuals of an inhalation injury for special home adaptation grants under § 3.809a because inhalation injuries can result from the same incidents that cause severe burns. Inhalation injury is due to breathing steam or toxic inhalants such as fumes, gases, and mists present in a fire environment. Toxic inhalants comprise a variety of noxious gases and particulate matter that are capable of producing local irritation, asphyxiation, and systemic toxicity. The Washington Manual of Medical Therapeutics 752 (Wash. U. of St. Louis, 32d ed. 2007).

Some examples of toxic inhalants are acrolein, chlorine, phosgene, and

nitrogen dioxide. Inhalation injuries can occur with or without burns to the skin. However, a significant number of individuals with burns to the skin also have inhalation injury, and the presence of inhalation injury is a determinant of mortality. Inhalation injury can cause long-term respiratory complications, including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease, requiring home adaptation. The specific residuals of such injury would determine the level of home adaptation. Residuals of inhalation injury would be rated under the predominant disability and its evaluative criteria.

Authority Citations

We additionally propose to amend the authority citations in §§ 3.809 and 3.809a to move the authority citations to the end of each section and ensure the citations are the correct authority for the regulatory provisions.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would not affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for the programs affected by this document are 64.106, Specially Adapted Housing for Disabled Veterans; and 64.109, Veterans Compensation for Service-Connected Disability.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Approved: October 26, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A–Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Revise § 3.362(e) to read as follows:

§ 3.362 Offsets under 38 U.S.C. 1151(b) of benefits awarded under 38 U.S.C. 1151(a).

* * * * *

(e) *Offset of award of benefits under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39.* (1) If a judgment, settlement, or compromise covered in paragraphs (b) through (d) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for a purpose for which benefits are provided under 38 U.S.C. chapter 21 (38 CFR 3.809 and 3.809a) or 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(2) If the amount described in paragraph (e)(1) of this section is greater than the amount of an award under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

(Authority: 38 U.S.C. 1151)

3. Revise § 3.800(a)(4) to read as follows:

§ 3.800 Disability or death due to hospitalization, etc.

* * * * *

(a) * * *

(4) *Offset of award of benefits under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39.* (i) If a judgment, settlement, or compromise covered by paragraph (a)(2) of this section becomes final on or after December 10, 2004, and includes an amount that is specifically designated for a purpose for which benefits are provided under 38 U.S.C. chapter 21 (38 CFR 3.809 and 3.809a) or 38 U.S.C. chapter 39 (38 CFR 3.808), and if VA awards 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39 benefits after the date on which the judgment, settlement, or compromise becomes final, the amount of the award will be reduced by the amount received under the judgment, settlement, or compromise for the same purpose.

(ii) If the amount described in paragraph (a)(4)(i) of this section is greater than the amount of an award under 38 U.S.C. chapter 21 or 38 U.S.C. chapter 39, the excess amount received under the judgment, settlement, or

compromise will be offset against benefits otherwise payable under 38 U.S.C. chapter 11.

(Authority: 38 U.S.C. 1151(b)(2))

* * * * *

4. Amend § 3.809 by:

a. In the section introductory text, removing ''38 U.S.C. 2101(a)'' and adding, in its place ''38 U.S.C. 2101(a) or 2101A(a)'' and by removing ''veteran'' and adding, in its place, ''veteran or a member of the Armed Forces serving on active duty'';

b. Revising paragraph (a);

c. Revising paragraph (b) introductory text;

d. In paragraph (b)(3), removing ''wheelchair.'' and adding, in its place, ''wheelchair, or'';

e. In paragraph (b)(4), removing ''with the loss of loss of use'' and adding, in its place, ''with the loss or loss of use'' and removing ''wheelchair.'' and adding, in its place, ''wheelchair, or'';

f. Adding paragraphs (b)(5) and (b)(6);

g. Removing paragraph (c);

h. Redesignating paragraph (d) as new paragraph (c); and

i. Revising the authority citation at the end of the section.

The revisions and additions read as follows:

§ 3.809 Specially adapted housing under 38 U.S.C. 2101(a).

* * * * *

(a) *Eligibility.* A veteran must have had active military, naval, or air service after April 20, 1898. Benefits are not restricted to veterans with wartime service. On or after December 16, 2003, the benefit under this section is also available to a member of the Armed Forces serving on active duty.

(b) *Disability.* A member of the Armed Forces serving on active duty must have a disability that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total. In either case, the disability must be due to:

* * * * *

(5) The loss or loss of use of both upper extremities such as to preclude use of the arms at or above the elbow, or

(6) Full thickness or subdermal burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk.

* * * * *

(Authority: 38 U.S.C. 1151(c)(1), 2101, 2101A).

5. Amend § 3.809a by:

a. In the section introductory text, removing ''38 U.S.C. 2101(b)'' and adding, in its place ''38 U.S.C. 2101(b) or 2101A(a)'' and by removing ''April 20, 1898,'' and adding, in its place, ''April 20, 1898, or to a member of the Armed Forces serving on active duty who is eligible for the benefit under this section on or after December 16, 2003,''.

b. Removing the authority citation after the section introductory text.

c. In paragraph (a), removing ''veteran'' each place it appears and adding, in each place, ''member of the Armed Forces serving on active duty or veteran'' and by removing the last sentence of paragraph (a).

d. Revising paragraph (b).

e. Removing paragraph (c).

f. Revising the authority citation at the end of the section.

g. Adding a cross-reference immediately after the authority citation at the end of the section.

The revision and addition read as follows:

§ 3.809a Special home adaptation grants under 38 U.S.C. 2101(b).

* * * * *

(b) A member of the Armed Forces serving on active duty must have a disability that was incurred or aggravated in line of duty in active military, naval, or air service. A veteran must be entitled to compensation under chapter 11 of title 38, United States Code, for a disability rated as permanent and total. In either case, the disability must:

(1) Include the anatomical loss or loss of use of both hands, or

(2) Be due to:

(i) Blindness in both eyes with 5/200 visual acuity or less, or

(ii) Deep partial thickness burns that have resulted in contractures with limitation of motion of two or more extremities or of at least one extremity and the trunk, or

(iii) Full thickness or subdermal burns that have resulted in contracture(s) with limitation of motion of one or more extremities or the trunk, or

(iv) Residuals of an inhalation injury (including, but not limited to, pulmonary fibrosis, asthma, and chronic obstructive pulmonary disease).

* * * * *

(Authority: 38 U.S.C. 1151(c)(1), 2101, 2101A, 2104).

Cross-Reference: Assistance to certain disabled veterans in acquiring specially adapted housing. *See* §§ 36.4400 through 36.4410 of this chapter.

[FR Doc. E9–30096 Filed 12–17–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AN34

Board of Veterans' Appeals: Remand or Referral for Further Action; Notification of Evidence Secured by the Board and Opportunity for Response

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend the Appeals Regulations of the Board of Veterans' Appeals (Board or BVA) to articulate the Board's practice of referring unadjudicated claims to the Agency of Original Jurisdiction (AOJ) for appropriate action, and to describe when it is appropriate for the Board to remand a claim to the AOJ for the limited purpose of issuing a Statement of the Case (SOC). We also propose to amend the Board's Rules of Practice to outline the procedures the Board must follow when supplementing the record with a recognized medical treatise, and to remove the notice procedures the Board must currently follow when considering law not considered by the AOJ. The purpose of these amendments is to codify existing practices derived from caselaw, enhance efficiency, and provide guidance and clarification.

DATES: Comments must be received by VA on or before February 16, 2010.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AN34—Board of Veterans' Appeals: Remand or Referral for Further Action; Notification of Evidence Secured by the Board and Opportunity for Response.'' All 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 for an appointment. (This is not a toll-free number.) 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: Laura H. Eskenazi, Principal Deputy Vice Chairman, Board of Veterans' Appeals (01C2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–8078. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Board is an administrative body within VA that decides appeals of decisions on claims for veterans' benefits, as well as a limited class of cases of original jurisdiction. The Board is under the administrative control and supervision of a Chairman who is directly responsible to the Secretary. 38 U.S.C. 7101(a). The Board's Appeals Regulations are found at 38 CFR Part 19, and its Rules of Practice are found at 38 CFR Part 20. This document proposes to amend Parts 19 and 20 to codify existing practices derived from caselaw, enhance efficiency, and provide guidance and clarification. Specifically, we propose to amend 38 CFR 19.9 to articulate the Board's practice of referring unadjudicated claims to the AOJ for appropriate action. We also propose to amend this section to describe when it is appropriate for the Board to remand a claim to the AOJ for the limited purpose of issuing an SOC. Additionally, we propose to amend 38 CFR 20.903 to codify the procedures the Board must follow when supplementing the record with a recognized medical treatise, and to eliminate the notice procedures the Board must currently follow when considering law not considered by the AOJ. The specific changes to each section will be discussed in turn.

I. 38 CFR 19.9

A. Referral of Unadjudicated Claims

In reviewing a claim on appeal, the Board sometimes discovers an unadjudicated claim in the record. The courts in recent years have addressed whether the evidence of record raises a claim and whether a claim, either implied or explicit, has been adjudicated. *See, e.g., Williams* v. *Peake,* 521 F.3d 1348 (Fed. Cir. 2008); *Deshotel* v. *Nicholson,* 457 F.3d 1258 (Fed. Cir. 2006); *Ingram* v. *Nicholson,* 21 Vet. App. 232 (2007). Whether the record contains an unadjudicated claim often depends on the factual similarity of other existing claims. *See Moody* v. *Principi,* 360 F.3d 1306, 1310 (Fed. Cir. 2004) (observing that whether various filings submitted by a claimant should be interpreted as a claim is ''essentially a factual inquiry''). The purpose of this proposed rulemaking is not to outline what filings should be interpreted as raising a claim and under what circumstances such claims are considered adjudicated; those questions are outside the scope of this rulemaking. Rather, the purpose of this proposed rulemaking is to provide guidance as to what action the Board should take when it discovers an unadjudicated claim in the record.

A common example of this situation is a claimant submitting a new claim at a hearing before the Board. The Board may, consistent with 38 CFR 3.155(a) (''Any communication or action * * * indicating an intent to apply for one or more benefits * * * may be considered an informal claim.''), construe a particular statement as a new claim. However, the Board may not adjudicate the newly-raised claim because, with the exception of a narrow class of matters over which the Board has original jurisdiction, *see, e.g.,* 38 U.S.C. 7111, the Board is charged with deciding appeals and may not review evidence in the first instance. To do so would frustrate a claimant's right to both an initial AOJ decision and the Board's appellate review of that decision. *See Disabled Am. Veterans* v. *Sec'y of Veterans Affairs,* 327 F.3d 1339, 1347 (Fed. Cir. 2003) [hereinafter ''*DAV*''] (noting that, under 38 U.S.C. 511(a) and 7104(a), ''the Board acts on behalf of the Secretary in making the ultimate decision on claims and provides 'one review on appeal to the Secretary' ''). Because the Board may not adjudicate the new claim in the first instance, the Board ''refers'' the unadjudicated claim to the AOJ for appropriate action. These referrals help ensure that the claim will not be overlooked.

The Board's practice of referring claims was addressed favorably by the United States Court of Appeals for Veterans Claims (Court) in *Godfrey* v. *Brown,* 7 Vet. App. 398 (1995). In *Godfrey,* the Court noted that ''section 7105 of title 38, U.S. Code, establishes 'very specific, sequential, procedural steps that must be carried out by a claimant and the [AOJ] * * * before a claimant may secure ''appellate review'' by the BVA'.'' *Godfrey,* 7 Vet. App. at 409 (quoting *Bernard* v. *Brown,* 4 Vet. App. 384, 390 (1993)). The Court reasoned that allowing the Board to refer a claim to the AOJ enables the AOJ to make the ''initial review or determination'' on that claim, as referenced in 38 U.S.C. 7105(b)(1), and thus permits VA to follow the procedural prerequisites for appellate review. *Id.* at 410. Thus, the Court held that ''the Board did not err in referring [a] right-ankle claim to the [AOJ] without additional specific instructions because * * * that [claim] was not in appellate status.'' *Id.* at 409. Since *Godfrey,* the Court has often referenced the Board's ability to refer an unadjudicated claim to the AOJ for initial adjudication. *See, e.g., Jarrell* v. *Nicholson,* 20 Vet. App. 326, 334 (2006) (concluding that, because the Board lacked jurisdiction over the merits of a claim that had not been presented to and adjudicated by the AOJ, the appropriate course of action for the Board was to refer the matter to the AOJ for adjudication in the first instance); *Richardson* v. *Nicholson,* 20 Vet. App. 64, 72–73 (2006) (observing that, if the Board determines that a claim for service connection was reasonably raised but not adjudicated, the claim remains pending and must be referred to the AOJ for adjudication); *Bruce* v. *West,* 11 Vet. App. 405, 408 (1998) (holding that the Board properly referred to the AOJ a claim for service connection for tinnitus that the claimant raised for the first time in his testimony at a hearing before the Board for other claims on appeal); *Smallwood* v. *Brown,* 10 Vet. App. 93, 99–100 (1997) (concluding that the Board did not err in referring a clear and unmistakable error claim to the AOJ for adjudication).

Although the Board's regulations prescribe when a remand is and is not necessary, the regulations are silent as to the referral process. The Board's Appeals Regulations, contained in 38 CFR Part 19, include a Subpart A—Operation of the Board of Veterans' Appeals, which in turn includes a section titled ''Remand for further development.'' 38 CFR 19.9. That section indicates that, ''[i]f further evidence, clarification of the evidence, correction of a procedural defect, or any other action is essential for a proper appellate decision, a Veterans Law Judge * * * shall remand the case to the [AOJ], specifying the action to be undertaken.'' *Id.* § 19.9(a). The rule also sets forth ''exceptions'' for circumstances in which a remand is not necessary. *Id.* § 19.9(b). However, no rule mentions the Board's existing practice of referring unadjudicated claims to the AOJ for initial adjudication. Therefore, for clarity and consistency, we propose to codify this existing, court-sanctioned practice by amending 38 CFR 19.9 to describe when it is appropriate to refer a claim to the AOJ. Referral of a claim by the Board will not constitute review of the claim on appeal. Rather, the referral will be a formalized mechanism by which to notify the AOJ of an unadjudicated claim so that the AOJ may make the ''initial review or determination'' on that claim, *see* 38 U.S.C. 7105(b)(1), as

well as take any other action the AOJ deems necessary.

We propose to revise the section heading of § 19.9 to read, ''Remand or referral for further action'', to reflect inclusion of the referral action under this section. We also propose to list in a new paragraph (d) the situations for which neither a remand nor referral is required and to revise paragraph (b) to describe the details of the referral action. New paragraph (b) would require that the Board refer to the AOJ for appropriate consideration and handling in the first instance all claims reasonably raised by the record that have not been initially adjudicated by the AOJ, except for claims over which the Board has original jurisdiction. An example of a claim over which the Board has original jurisdiction is a motion for revision of a final Board decision based on clear and unmistakable error. 38 U.S.C. 7111(e) (request for revision of a Board decision based on clear and unmistakable error must be decided by the Board on the merits without referral to any adjudicative or hearing official acting on the Secretary's behalf).

B. Remand for Issuance of an SOC

A similar situation arises when the Board discovers a Notice of Disagreement (NOD) that was timely filed in response to a decision by the AOJ, but the record does not reflect that the AOJ issued an SOC as required by 38 U.S.C. 7105(d)(1) before forwarding the claims file to the Board. If the Board discovers a timely-filed NOD, and it is apparent that the NOD was not withdrawn or the claim was not granted in full following the NOD, but an SOC was never issued, the Board is faced with a question as to the proper handling of that claim.

The Court addressed this procedural situation in *Manlincon* v. *West,* 12 Vet. App. 238, 240 (1999), recognizing that an NOD initiates ''review by the Board.'' The Court held that if a timely NOD is filed but an SOC is not issued, the proper remedy for the Board is to remand, not refer, the issue to the AOJ for issuance of a SOC. *Id.* at 240–41. Since *Manlincon* was decided, the Board has been following the practice mandated by the Court. If during the course of reviewing an appeal properly before it, the Board discovers a timely filed NOD as to a claim adjudicated by the AOJ but not granted in full, and the NOD has not been withdrawn, but no SOC was issued as to that claim, the Board remands the claim to the AOJ for the limited purpose of issuing an SOC. In other words, the Board takes jurisdiction over the claim for the limited purpose of remanding it to the AOJ to issue an SOC. The appeal initiated by the filing of the NOD will be subsequently returned to the Board only if, after the AOJ issues the SOC, the appellant files a timely Substantive Appeal that perfects the appeal to the Board. *See* 38 U.S.C. 7105(d)(3).

The Board's Appeals Regulations, Subpart A—Operation of the Board of Veterans' Appeals, currently contain guidance as to when it is proper for the Board to remand a case to the AOJ, but the guidance does not cover the *Manlincon* situation. Therefore, the Board proposes to amend its regulations to codify this existing practice for clarity and consistency in adjudication. Specifically, we propose to revise paragraph (c) of 38 CFR 19.9 to address the *Manlincon* situation. New paragraph (c) would instruct the Board to remand a claim for issuance of an SOC if an NOD has been timely filed and not withdrawn, but the AOJ has not subsequently granted the claim in full or furnished the claimant with an SOC.

Although the *Manlincon* decision did not specifically address the action the Board should take if the AOJ partially grants a claim following an NOD but does not issue an SOC, proposed § 19.9(c) would extend the *Manlincon* remand procedures to cover this situation. It is generally presumed that a claimant is ''seeking the maximum benefit allowed by law and regulation'' and that a claim ''remains in controversy where less than the maximum benefit available is awarded.'' *AB* v. *Brown,* 6 Vet. App. 35, 38 (1993). The AOJ is therefore required to issue an SOC in cases where the claim is partially granted following the NOD, just as it would in cases where the benefit sought is denied outright. We believe that it is consistent with *Manlincon* for the Board to remand for issuance of an SOC if the claim was only partially granted following the NOD and no SOC was furnished. Proposed § 19.9(c) would therefore require remand for issuance of an SOC unless the claim is granted in full following the NOD or the claimant, consistent with the withdrawal requirements of 38 CFR 20.204, withdraws the NOD.

We also propose to make additional changes to 38 CFR 19.9 to enhance clarity and readability. Current paragraph (b) of § 19.9 is titled ''Exceptions'' and sets forth several specific situations in which remand to the AOJ is unnecessary. Current paragraph (c) is titled ''Scope'' and outlines specific matters over which the provisions of § 19.9 do not apply. While these paragraphs are titled differently, the purpose of each is essentially the same: Namely, to outline various circumstances in which a remand to the AOJ is not legally required. Because the provisions of current paragraphs (b) and (c) are meant to accomplish the same purpose, we propose to combine the provisions of each paragraph in a new paragraph (d) that would set forth the situations in which a remand or referral to the AOJ is not necessary. Specifically, new paragraph (d) would provide that remand to the AOJ is not necessary for each of the activities outlined in current paragraphs (b)(1) through (3) and (c)(1) through (3). Additional proposed changes to current paragraph (b)(2) are discussed in greater detail below.

II. 38 CFR 20.903

A. Thurber Procedures

We propose to amend 38 CFR 20.903 to clarify the procedures the Board must follow when it supplements the record with a recognized medical treatise.

The Court has long held that the Board is free to supplement the record on appeal with a recognized medical treatise. *See, e.g., Hatlestad* v. *Derwinski,* 3 Vet. App. 213, 217 (1992) (noting that the Board should ''include in its decisions quotations from medical treatises * * * and [that] such quotations should be of sufficient length so that their context * * * is able to be determined''); *Colvin* v. *Derwinski,* 1 Vet. App. 171, 175 (1991) (observing that if ''the medical evidence of record is insufficient, or, in the opinion of BVA, of doubtful weight or credibility, the BVA is always free to supplement the record by . . . citing recognized medical treatises in its decisions that clearly support its ultimate conclusions''). When the Board does supplement the record in this way, however, the Court has also held that the Board must ''provide the appellant with notice of its intention to use a medical treatise as well as an opportunity to respond thereto.'' *See Kirwin* v. *Brown,* 8 Vet. App. 148, 153 (1995) (citing *Thurber* v. *Brown,* 5 Vet. App. 119, 126 (1993)); *see also Hatlestad, supra.* The Board's Appeals Regulations provide that such notice does not require remand to the AOJ. 38 CFR 19.9(c)(2); *see also Kirwin* and *Thurber, supra.*

In compliance with *Kirwin* and *Thurber,* when the Board wishes to supplement the record with a recognized medical treatise, the Board's practice has been to provide the appellant with a copy of the medical treatise evidence to be used and offer the appellant and his or her representative, if any, 60 days to

respond. Similar ''notice and response'' procedures are currently codified for situations where the Board considers an opinion from the Veterans Health Administration (VHA), the Armed Forces Institute of Pathology (AFIP), VA's General Counsel (GC), or an independent medical expert (IME). 38 CFR 20.901, 20.903.

Thus, the notice and opportunity to respond provisions are currently set forth by regulation with respect to the Board's consideration of VHA, AFIP, GC, and IME opinions, but the regulations are silent with respect to the Board's obligation to provide an appellant with notice of the Board's intent to supplement the record with a recognized medical treatise. Essentially, the Board's Rules of Practice contain a gap because § 19.9(c)(2) allows the Board to supplement the record with a recognized medical treatise without first remanding the claim to the AOJ, but the regulations do not contain a corresponding provision that outlines the ''notice and response'' procedures required by *Kirwin* and *Thurber.*

To fill this gap, and for other reasons discussed below, we propose to revise paragraph (b) of 38 CFR 20.903. Proposed § 20.903(b)(1) would set forth the general rule that when the Board supplements the record with a recognized medical treatise it must notify the appellant and his or her representative, if any, that the Board will consider such recognized medical treatise in the adjudication of the appeal. Proposed 38 CFR 20.903(b)(1) would also require that such notice contain a copy of the relevant portions of the recognized medical treatise. A 60-day period would be allowed for response. Such an approach is consistent with the ''notice and response'' provisions provided for in situations where the Board considers an opinion from VHA, AFIP, VA's GC, or an IME. 38 CFR 20.901, 20.903(a).

Although *Thurber* stated that the Board must provide the appellant with notice of the ''reliance proposed to be placed on [the medical treatise evidence],'' 5 Vet. App. at 126, we have slightly modified this language in proposed § 20.903(b)(1). We believe that the word ''reliance'' could be misconstrued as suggesting that the Board has already reached a preliminary decision on the claim. We do not, however, believe that *Thurber* requires the Board to pre-adjudicate a claim before following the required notice procedures. To the contrary, the notice procedures outlined in *Thurber* are meant to elicit additional evidence and argument that will more fully inform the Board's eventual decision. To clarify that the Board need not pre-adjudicate the claim to employ the *Thurber* notice procedures, proposed § 20.903(b)(1) would require only that the Board notify the appellant that it ''will consider such recognized medical treatise in the adjudication of the appeal.'' We believe that this language serves the purpose of alerting the appellant that the Board will rely upon such evidence in reaching its ultimate determination as required by *Thurber,* while at the same time avoiding any implication that the Board has reached a preliminary decision on the appeal.

Proposed § 20.903(b)(2) would provide that notice is not required if the Board uses a recognized medical treatise or a medical dictionary for the limited purpose of defining a medical term and that definition is not material to the Board's disposition of the appeal. The Board routinely cites medical dictionaries to define words that are not in common usage among lay people, such as names of rare diseases or obscure anatomical terms. The Court has followed a similar practice over the years. *See, e.g., Fritz* v. *Nicholson,* 20 Vet. App. 507, 511 (2006) (relying on Dorland's Illustrated Medical Dictionary to define ''care''); *Felden* v. *West,* 11 Vet. App. 427, 430 (1998) (relying on Dorland's Illustrated Medical Dictionary to define ''convalescence''); *Lendenmann* v. *Principi,* 3 Vet. App. 345, 347 (1992) (relying on Webster's Medical Desk Dictionary to define several medical terms). Where the Board cites a definition contained in a medical treatise or dictionary solely for the purpose of clarifying or explaining a medical term, following the notice procedures required by *Thurber* would serve no useful purpose because in such circumstances the definition is being provided for general background information and is not being relied on by the Board in its adjudication of the appeal. However, under proposed § 20.903(b)(2), if the Board intends to use a definition found in a medical treatise or dictionary in a manner that would materially affect its decision, the notice procedures required by *Thurber* would still need to be followed.

B. Board Consideration of Law Not Already Considered by the AOJ

As outlined above, we propose to revise current paragraph (b) of § 20.903 to include the *Thurber* notice provisions. We further propose to completely remove the provisions of current 38 CFR 20.903(b) from the Board's Rules of Practice.

Current § 20.903(b) requires that if the Board intends to consider law not already considered by the AOJ, and such consideration could result in denial of the appeal, the Board must notify the appellant and his or her representative of its intent to do so, provide a copy or summary of the law to be considered, and allow 60 days for a response. A predecessor of this provision was first added to the Board's Rules of practice in 2002 as part of a larger rulemaking that, among other things, established procedures allowing the Board to develop the record and consider evidence in the first instance without remanding the appeal to the AOJ. *See* 67 FR 3099, 3105 (Jan. 23, 2002). A predecessor to current 38 CFR 19.9(b)(2), which permits the Board to consider law not considered by the AOJ without remanding the appeal, was also added to the Board's Rules of Practice as part of the same rulemaking. *Id.* at 3104.

The United States Court of Appeals for the Federal Circuit (Federal Circuit) subsequently invalidated several regulatory provisions in the Board's Rules of Practice that allowed the Board to conduct development and consider evidence in the first instance without remand to the AOJ. *See DAV,* 327 F.3d at 1341–42. As a result of the *DAV* decision, VA substantially revised §§ 19.9 and 20.903, but the predecessors to current §§ 19.9(b)(2) and 20.903(b) were retained, with minimal, largely non-substantive changes. *See* 69 FR 53807, 53808 (Sept. 3, 2004).

In light of the Federal Circuit's decision in *DAV* and several statutory provisions, we believe that the notice procedures outlined in current § 20.903(b) are unnecessary and should be removed from the Board's Rules of Practice. In *DAV,* the Federal Circuit considered a challenge to the validity of § 19.9(b)(2), which permitted the Board to consider law not considered by the AOJ in the first instance. *DAV,* 327 F.3d at 1349. The Federal Circuit deferred to VA's interpretation that the ''Board's status as an appellate body does not bar it from considering law not considered by the AOJ,'' and held that in considering ''whether the proper law was applied by the AOJ in a particular claim, the Board inherently provides legal questions 'one review on appeal to the Secretary' as required by [38 U.S.C.] 7104(a).'' *Id.* The Federal Circuit's holding was not predicated on the Board's adherence to the notice provisions outlined in current § 20.903(b). *Id.*

Several statutory provisions also contemplate the Board's consideration of all applicable law, whether or not such law has been considered by the AOJ and regardless of whether the notice provisions of current § 20.903(b)

have been satisfied. As pointed out by the Federal Circuit in *DAV,* 38 U.S.C. 7104(a) requires that ''[d]ecisions of the Board * * * be based * * * upon consideration of all * * * applicable provisions of law and regulation.'' *Id.* Section 7104(c) provides that the ''Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.'' 38 U.S.C. 7104(c). Moreover, 38 U.S.C. 7104(d) requires that each Board decision include ''a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on *all material issues of fact and law* presented on the record.'' (emphasis added). None of these provisions is conditioned on the Board's following notice procedures similar to those currently outlined in 38 CFR 20.903(b). To the contrary, the notice procedures outlined in current 38 CFR 20.903(b) are not the product of any specific statutory requirement. We believe that removing this provision is consistent with the jurisprudence of both the Court and the Federal Circuit, and more accurately depicts the Board's statutory obligation to consider all applicable provisions of law and regulation.

To be consistent with our proposed removal of these provisions from current paragraph (b), we also propose to remove the reference to notification of law to be considered by the Board from the section heading of § 20.903. We also propose to remove the reference to Board consideration of law not considered by the AOJ from 38 CFR 20.1304(b)(2) and not to include in proposed § 19.9(d)(2) any reference to § 20.903.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866—Regulatory Planning and Review

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is not a significant regulatory action under Executive Order 12866 because it primarily codifies longstanding VA practice and already existing law, does not raise any novel legal or policy issues, and will have little to no effect on the economy.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans' Surviving Spouses and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing—Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116, Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing—Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

List of Subjects in 38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Approved: November 13, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR parts 19 and 20 as follows:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

Subpart A—Operation of the Board of Veterans' Appeals

2. Amend § 19.9 by:

a. Revising the section heading and paragraph (a) heading.

b. Revising paragraphs (b) and (c).

c. Adding paragraph (d).

d. Revising the authority citation at the end of the section.

The revisions and addition read as follows:

§ 19.9 Remand or referral for further action.

(a) *Remand.* * * *

* * * * *

(b) *Referral.* The Board shall refer to the agency of original jurisdiction for appropriate consideration and handling in the first instance all claims reasonably raised by the record that have not been initially adjudicated by the agency of original jurisdiction,

except for claims over which the Board has original jurisdiction.

(c) *Remand for a Statement of the Case.* In cases before the Board in which a claimant has timely filed a Notice of Disagreement with a determination of the agency of original jurisdiction on a claim, but the record does not reflect that the agency of original jurisdiction subsequently granted the claim in full or furnished the claimant with a Statement of the Case, the Board shall remand the claim to the agency of original jurisdiction with instructions to prepare and issue a Statement of the Case in accordance with the provisions of subpart B of this part. A remand for a Statement of the Case is not required if the claimant, consistent with the withdrawal requirements of § 20.204 of this chapter, withdraws the Notice of Disagreement.

(d) *Exceptions.* A remand or referral to the agency of original jurisdiction is not necessary for any of the following purposes:

(1) Clarifying a procedural matter before the Board, including the appellant's choice of representative before the Board, the issues on appeal, or requests for a hearing before the Board;

(2) Considering law not already considered by the agency of original jurisdiction, including, but not limited to, statutes, regulations, and court decisions;

(3) Reviewing additional evidence received by the Board, if, pursuant to § 20.1304(c) of this chapter, the appellant or the appellant's representative waives the right to initial consideration by the agency of original jurisdiction, or if the Board determines that the benefit or benefits to which the evidence relates may be fully allowed on appeal;

(4) Requesting an opinion under § 20.901 of this chapter;

(5) Supplementing the record with a recognized medical treatise; or

(6) Considering a matter over which the Board has original jurisdiction.

(Authority: 38 U.S.C. 7102, 7103(c), 7104(a), 7105).

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

3. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart J—Action by the Board

4. Amend § 20.903 by:

a. Revising the section heading.

b. Revising paragraph (b).

The revisions read as follows:

§ 20.903 Rule 903. Notification of evidence to be considered by the Board and opportunity for response.

* * * * *

(b) *If the Board supplements the record with a recognized medical treatise.* (1) *General.* If, pursuant to § 19.9(d)(5) of this chapter, the Board supplements the record with a recognized medical treatise, the Board will notify the appellant and his or her representative, if any, that the Board will consider such recognized medical treatise in the adjudication of the appeal. The notice from the Board will contain a copy of the relevant portions of the recognized medical treatise. The appellant will be given 60 days after the date of the notice described in this section to file a response, which may include the submission of relevant evidence or argument. The date the Board gives the notice will be presumed to be the same as the date of the notice letter for purposes of determining whether a response was timely filed.

(2) *Exception.* The notice described in paragraph (b)(1) of this section is not required if the Board uses a recognized medical treatise or medical dictionary for the limited purpose of defining a medical term and that definition is not material to the Board's disposition of the appeal.

5. Revise paragraph (b)(2) of § 20.1304 to read as follows:

§ 20.1304 Rule 1304. Request for change in representation, request for personal hearing, or submission of additional evidence following certification of an appeal to the Board of Veterans' Appeals.

* * * * *

(b) * * *

(2) *Exception.* The motion described in paragraph (b)(1) of this section is not required to submit evidence in response to a notice described in § 20.903 of this chapter.

* * * * *

[FR Doc. E9–30094 Filed 12–17–09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0859, FRL–9093–7]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that address reduction of animal matter and volatile organic compound (VOC) emissions from crude oil production, cutback asphalt, and petroleum solvent dry cleaning.

DATES: Any comments must arrive by January 19, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2009–0859, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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.

FOR FURTHER INFORMATION CONTACT: Joanne Wells, EPA Region IX, (415) 947–4118, *wells.joanne@epa.gov*.

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

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C. EPA Recommendations To Further Improve the Rules
D. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted, amended, or revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES PROPOSED FOR FULL APPROVAL

District	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	4104	Reduction of Animal Matter	12/17/92	08/24/07
SJVUAPCD	4404	Heavy Oil Test Station—Kern County	12/17/92	08/24/07
SJVUAPCD	4641	Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations.	12/17/92	08/24/07
SJVUAPCD	4672	Petroleum Solvent Dry Cleaning Operations	12/17/92	08/24/07

On September 17, 2007, the submittal of August 24, 2007 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

Some SIP versions of submitted SJVAPCD rules are old rules from the eight counties that now comprise SJVAPCD; other SIP versions are SJVAPCD rules that have been renumbered. These SIP-approved rules are described below.

Precursor SIP rules for submitted SJVAPCD Rule 4104:

- Fresno County Rule 414, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Kern County Rule 415, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Kings County Rule 415, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Madera County Rule 421, Reduction of Animal Matter (approved on November 18, 1983, 48 FR 52450).
- Merced County Rule 414, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- San Joaquin County Rule 414, Reduction of Animal Matter (approved on August 22, 1977, 42 FR 42219).
- Stanislaus County Rule 414, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).
- Tulare County Rule 415, Reduction of Animal Matter (approved on September 22, 1972, 37 FR 19812).

Precursor SIP rule for submitted SJVAPCD Rule 4641:

- SJVAPCD Rule 463.1, Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations (amended on September 19, 1991, approved on June 24, 1992, 57 FR 28089).

Precursor SIP rule for submitted SJVAPCD Rule 4672:

- SJVAPCD Rule 467.2, Petroleum Solvent Dry Cleaning Operations (adopted on April 11, 1991, approved on April 24, 1992, 57 FR 15026).

There is no SIP rule for submitted SJVAPCD Rule 4404.

C. What Is the Purpose of the Submitted Rules and Rule Revisions?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

The purpose of new SJVAPCD Rule 4404 is as follows:

- *4404:* The new rule requires reducing uncontrolled VOC emissions from a heavy oil test station by 99%.

The purposes of amendments to Rules 4104, 4641, and 4672 are as follows:

- *4104:* The requirement for reducing air contaminants during the reduction of animal matter by setting a minimum exposure time of 0.3 seconds at 1200 degrees Fahrenheit is unchanged. The format is improved, the rule is renumbered, and the rule applicability is added.
- *4641:* The rule requires reducing VOC emissions by prohibiting the application and manufacturing of certain types of asphalt used for paving and maintenance operations. The format is improved, the rule is renumbered, and the definition of VOC is deleted.
- *4672:* The rule requires reducing VOC emissions from petroleum solvent dry cleaning operations through implementation of various good operating practices and with the use of emission control equipment. The format is improved, the rule is renumbered, and the rule purpose is added.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (*see* section 182(a)(2)), and must not relax existing requirements (*see* sections 110(l) and 193). The SJVAPCD regulates an ozone nonattainment area (see 40 CFR part 81) and must fulfill the requirements of RACT.

Guidance and policy documents that we used to help evaluate rules and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).
2. *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
3. *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988). [The Bluebook]
4. Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 59 FR 41998 (August 16, 1994).
5. *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region 9 (August 21, 2001). [The Little Bluebook]

6. *Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners*, U.S. EPA–450/3–82–009 (September 1982).

7. *Control of Volatile Organic Emissions from Use of Cutback Asphalt*, U.S. EPA–450/2–77–037 (December 1977).

8. *2007 Ozone Plan*, San Joaquin Valley Air Pollution Control District (April 30, 2007). *http://www.arb.ca.gov/planning/sip/2007sip/sjv8hr/sjvozone.htm.*

9. *RACT Demonstration for Ozone SIP*, San Joaquin Valley Air Pollution Control District (April 16, 2009). *http://www.valleyair.org/Workshops/public_workshops_idx.htm#8hrOzone RactSIP%2004-16-10.*

10. *RACT Analysis for Rules 4104, 4402, 4404, 4453, 4454, 4625, 4641, and 4672*, San Joaquin Valley Air Pollution Control District (June 12, 2008).

B. Do the Rules Meet the Evaluation Criteria?

We believe that SJVAPCD Rules 4104, 4404, 4641, and 4672 are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations.

The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the CAA. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable 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.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 2, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E9–30169 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 595

[Docket No. NHTSA–2009–0065]

RIN 2127–AK22

Make Inoperative Exemptions; Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Response to petition; Notice of proposed rulemaking (NPRM).

SUMMARY: This notice of proposed rulemaking is being issued in response to a petition from Bruno Independent Living Aids to expand and update existing exemptions to the ''make inoperative'' prohibition with respect to the Federal motor vehicle safety standard on head restraints. These exemptions are included in a regulation that provides exemptions for the ''make inoperative'' provision for, among other things, vehicle modifications to accommodate people with disabilities. NHTSA is proposing two substantive changes to the regulation. The first is to expand the exemption from the minimum height requirements listed in the head restraint standard to include the right front passenger position in addition to the driver position. The second is to update the exemption to include relevant provisions of a new version of the head restraint standard. Additionally, this document proposes to update an existing reference in the exemption to reflect the current numbering in the Code of Federal Regulations. Finally, we are denying other requests to expand the exemption to certain other requirements of the head restraint standard.

DATES: You should submit our comments early enough to ensure that Docket Management receives them not later than February 16, 2010.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document 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:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Ms. Gayle Dalrymple, Office of Crash Avoidance Standards, NVS–123 (E-mail: *gayle.dalrymple@dot.gov*) (Telephone: 202–366–2720) (Fax: 202–493–2739).

For legal issues, you may contact Mr. Ari Scott, Office of Chief Counsel, NCC–112 (E-mail: *ari.scott@dot.gov*) (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

a. History of the Make Inoperative Exemptions

Federal law requires vehicle manufacturers to certify that their vehicles comply with all applicable Federal motor vehicle safety standards (FMVSSs) (*see* 49 U.S.C. 30112). A vehicle manufacturer, distributor, dealer, or repair business generally may not knowingly make inoperative any part of a device or element of design installed in or on a motor vehicle in compliance with an applicable standard (*see* 49 U.S.C. 30122). However, the National Highway Traffic Safety Administration (NHTSA) has the authority to issue regulations that exempt regulated entities from the make inoperative provision (*see* 49 U.S.C. 30122(c)).

On February 27, 2001, the agency issued a final rule (66 FR 12638) establishing exemptions from the make inoperative provisions for certain sections of several FMVSSs under certain limited circumstances when vehicles are modified to be used by persons with disabilities. This rulemaking was undertaken to facilitate the modification of motor vehicles so that persons with disabilities can drive or ride in them. Since the publication of the 2001 rule, NHTSA has made updates to the exemptions to keep pace with changes in the standards for which those exemptions were written. An example of such a change includes a final rule issued on August 31, 2005 (70 FR 51673) adding exemptions for the updated sections of FMVSS No. 201, *Occupant Protection in Interior Impact,* and FMVSS No. 208, *Occupant Crash Protection,* as well as establishing an exemption for FMVSS No. 225, *Child Restraint Anchorage Systems.*

b. Current Exemptions in Part 595 Regarding Head Restraints

Currently, there are two portions of part 595 that deal with the head restraint requirements in Standard No. 202, *Head Restraints.* These exemptions from the make inoperative provision to accommodate people with disabilities include 49 CFR 595.7(c)(8), which provides an exemption from all requirements of Standard No. 202 for vehicles modified to accommodate a driver or right front passenger seated in a wheelchair and no other seat is provided, as well as 49 CFR 595.7(c)(9), which provides an exemption from the driver side head restraint height/width requirements for vehicles modified to accommodate drivers with a disability. There are currently no exemptions in Part 595 that pertain to the requirements in the upgraded FMVSS No. 202a.

c. Petition for Rulemaking

On January 2, 2007 NHTSA received a petition for rulemaking from Bruno Independent Living Aids (Bruno) requesting that we amend part 595 to add an exemption for passengers' side head restraint systems. In submitting its petition, Bruno wished to facilitate use of its product, called Turning Automotive Seating (TAS), which provides access to motor vehicles to people with disabilities. This device consists of a rotating, motorized seat, which replaces the OEM seat in a motor vehicle. The TAS pivots from the forward-facing driving position to the side-facing entry position and extends outward and lowers to a suitable transfer height, providing the driver and/or passenger easy entry into the vehicle. The transfer into the seat takes place while outside the vehicle, and the occupant remains in the seat during the entry process, using OEM seat belts while traveling in the vehicle. Exiting the vehicle is accomplished by reversing the process. Another TAS option is a mobility base, which converts the automotive seat into a wheelchair, eliminating the need for transferring from the seat altogether. Bruno states that TAS systems provide mobility-impaired persons with safer and easier ways to enter and exit a vehicle.

In its petition, Bruno states that the TAS provides substantial safety benefits. As a basis for this claim, Bruno cites a NHTSA Research published in 1997.[1] In this note, the agency stated that between 1991 and 1995, 7,121 people were killed or injured due to the

[1] *Wheelchair Users Injuries and Deaths Associated with Motor Vehicle related Incidents,* September 1997, available at *http://www.nhtsa.dot.gov.*

following reasons: improper or no securement, lift malfunction, transferring to or from a motor vehicle, falling on or off the ramp, and a collision between the wheelchair and a motor vehicle.[2] According to Bruno's petition, the TAS will help prevent 74% of those injuries—which includes all injuries except those occurring when a wheelchair is struck by a motor vehicle. This is because the TAS will provide wheelchair users an easy and safe way to enter and exit these vehicles.

Bruno indicated that the TAS currently complies with FMVSS No. 202. However, the clearance between the top of the head restraint and the door opening can restrict the number of viable vehicle applications. Bruno also stated that the increased head restraint height required by the new FMVSS No. 202a will significantly reduce the number of available vehicle applications.

To facilitate the installation of the TAS on vehicles, Bruno requested that the make inoperative exemptions of 49 CFR part 595 be expanded and updated to cover both driver and passenger side head restraints, for persons not in a wheelchair, to reflect the new FMVSS No. 202a. Bruno suggested that the expanded exemptions it requires be added to either or both of the current Part 595 exemptions addressing head restraints.

In requesting that the exemptions be updated to reflect the new FMVSS No. 202a, Bruno requested that the make inoperative provisions that provide exemptions to portions of FMVSS No. 202 be extended to cover the equivalent portions of FMVSS No. 202a. Additionally, that company requested that the exemptions in part 595 be expanded to cover several aspects of FMVSS No. 202a that are not currently provided for FMVSS No. 202. Specifically, Bruno requested more broadly that Part 595 be updated to include an exemption for 49 CFR 571.202a S4.2.1 through S4.2.7. These paragraphs encompass requirements on minimum height, width, backsets, gaps, energy absorption, height retention, backset retention, displacement, and strength.

Finally, Bruno noted an error where § 595.7(c)(9) mistakenly points to S4.3 of Standard No. 202, instead of S4.2. In the current version of FMVSS No. 202, paragraph S4.3 contains documents incorporated by reference, while paragraph S4.2 contains the requirements for head restraints at issue.

[2] *Id.,* Table 2.

II. Response to Petition

NHTSA has decided to partially grant Bruno's petition. Specifically, and as discussed below, we are proposing to extend the height exemption in paragraph (c)(9) to cover the head restraints for the right front passenger as well as the driver. Additionally, we are proposing to update the exemption to cover the relevant portions of FMVSS No. 202a addressing height and width, and to correct the reference to paragraph S4.3 noted by Bruno. We are denying Bruno's request to provide exemptions for portions of FMVSS No. 202a other than ones addressing the height/width of head restraints. We are also proposing to update the exemption in paragraph (c)(8) to cite FMVSS No. 202a.

a. Agency Analysis of the Benefits of the TAS and Similar Systems

As stated above, Bruno made several arguments as to why the TAS provides safety and other benefits for people with disabilities. Therefore, it argues, it is in the public interest to expand the make inoperative provision of part 595 to facilitate the installation of the TAS in vehicles. The agency believes that these potential benefits apply not only to the TAS, but to similar systems that allow people with disabilities to enter and exit a vehicle in a similar fashion. In particular, the agency generally agrees that the TAS, and similar systems, provide benefits for people with disabilities, who may have difficulty entering or exiting a motor vehicle. Among other things, these systems permit people to enter and exit vehicles in a sitting position, without the need to climb or descend the height differential between the floor of the vehicle and the ground. In this fashion, they provide benefits in allowing people with disabilities to retain their mobility.

While there may be some degradation in whiplash protection if the minimum size requirements of Standard No. 202 and 202a are not adhered to, it is our tentative conclusion that the benefits for people with disabilities outweigh those potential drawbacks. Therefore, we are proposing several amendments to part 595 to facilitate the installation of these kinds of systems.

b. Response to Request for Changes to Part 595

i. Proposal To Expand the Current Head Restraint Exemption to Right Front Passengers

Section 595.7(c)(9) provides an exemption with regard to the height and width of the head restraint, as stated in paragraphs S4.2(b)(1) and (2) of FMVSS No. 202. This provision was established at the time of the first make inoperative final rule because NHTSA was aware of drivers who had a limited range of motion in turning their heads, and a head restraint of the size required by FMVSS No. 202 could interfere with the driver's ability to look behind for a lane change or backing.[3] We did not provide the exemption for passenger seating positions because we wished to keep the exemptions as narrow as possible, and we were not aware of any needs for changes to passengers' head restraints.

With the advent of new technology such as the TAS, head restraint height becomes a problem for passenger seating positions as well, due to the problem of clearance between the head restraint and door opening. We believe the requested exemption is a reasonable trade-off of some possible degradation in whiplash protection in exchange for facilitating vehicle entry and exit, and the value of mobility for people with disabilities. Therefore, we are proposing to expand the exemption in § 595.7(c)(9) regarding height to include right front passengers.

We note that, in its petition, Bruno stated that the ''remedy we seek is an amended 49 CFR part 595 Exemption in § 595.7(c)(8)(i), (c)(8)(ii), and/or (c)(9) to accommodate both *drivers and passengers, not in a wheelchair,* in a vehicle modified for persons with a disability to drive or be transported'' [emphasis in original]. It appears that Bruno was requesting that the agency modify part 595 to accommodate the TAS either by amending the exemption in paragraph (c)(8), or that in paragraph (c)(9). In order to achieve the maximum safety benefit of the regulations, it is our desire to provide the narrowest exemption possible in order to accommodate the needs of disabled persons, without expanding its use to situations where the benefits of the exemption may be outweighed by the drawbacks of noncompliance with the safety standard.

Currently, § 595.7(c)(8) provides an exemption from the entirety of FMVSS No. 202 for vehicles modified to accommodate either a driver ((c)(8)(i)) or right front passenger ((c)(8)(ii)) in a vehicle in which no respective seat is supplied with the vehicle. This provision was written to allow for the situation in which the vehicle was modified to use a wheelchair as a vehicle seat and no other seat was provided. If there is no seat, there is no head restraint, and therefore FMVSS No. 202 would have been made inoperative. By contrast, § 595.7(c)(9) provides, for driver head restraints, an exemption

[3] *Id.*

from the minimum dimension requirements set forth in paragraph S4.3(b).

Given the two alternatives of providing an exemption from the whole standard, or just giving an exemption from the requirements relating to the dimensions of the head restraint, we are not proposing modification of § 595.7(c)(8) in order to accommodate systems such as the TAS.

Section 595.7(c)(9) grants a more narrow exemption with regard to the size of the head restraint, as stated in paragraphs S4.2(b)(1) and (2) of FMVSS No. 202. Since expansion of this more narrow exemption would accommodate systems such as the TAS, we believe it is the more appropriate approach to take.

ii. Proposal To Update the Exemptions To Reflect Standard No. 202a

1. Proposal To Update Paragraph (c)(8)

Currently, § 595.7(c)(8) contains an exemption for vehicles where either the entire driver's seat or right front passenger's seat is removed so that the position may be occupied by a person seated in a wheelchair and no other seat is delivered with the vehicle. This exemption currently provides an exemption from Standard No. 202 in its entirety for those vehicles. For the reasons stated above, NHTSA is not proposing that paragraph (c)(8) be expanded to include passengers other than those whose only vehicle seat is a wheelchair. However, NHTSA is proposing to update the exemption in paragraph (c)(8) to include an exemption from Standard No. 202a as well. This will continue to allow vehicles to be modified such that wheelchairs can be used in lieu of other vehicle seats.

2. Proposal To Update the Paragraph (c)(9) Exemption To Include Head Restraint Height and Width Requirements for Drivers and Minimum Height Requirements for Right Front Passengers

Section 595.7(c)(9) already contains a provision permitting an exemption for the driver's head restraint from Standard No. 202 S4.2(b)(1) and (2), which set the minimum requirements for the height and width of a head restraint, as stated above. The portions of Standard No. 202a that correspond to S4.2(b)(1) and (2) of Standard No. 202 are paragraph S4.2.1(b) and S4.2.2, respectively. For reasons of clarity, in the proposed changes to part 595, we are placing the exemptions from the height requirements of FMVSS No. 202a in paragraph (c)(9)(iii), and the exemption from the width requirement in FMVSS No. 202a in paragraph (c)(9)(iv). Therefore, for the regulatory text to reflect the continuity of this exemption, we are proposing several changes. The first, reflected in § 595.7(c)(9)(iii), is to include a reference to paragraph S4.2.1(b) of Standard No. 202a in § 595.7(c)(9). Similarly, we are including a reference to S4.2.2 of Standard No. 202a in § 595.7(c)(9)(iv), to update the current exemption for the driver's head restraint to include the updated FMVSS. This will enable the current exemption to apply to Standard No. 202a in addition to Standard No. 202.

With regard to the passenger seating position, and in accordance with the petition for rulemaking, NHTSA is proposing to expand the exemption in § 595(c)(9) to include an exemption from the minimum height requirements of 49 CFR 571.202a, S4.2.1(b), for the right front passenger position. As stated above with regard to the proposed expansion of Part 595 to the right front passenger head restraint requirements of FMVSS No. 202, we believe that this will facilitate the use of motor vehicles by persons with disabilities. As this relates to the minimum height requirement, this exemption will also be included in § 595.7(c)(9)(iii). Therefore, we are proposing to add regulatory text to § 595.7(c)(9), which reads:

- For vehicles manufactured on and after March 14, 2005 and certified to FMVSS No. 202a, S4.2.1(b) of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver or a front outboard passenger with a disability.
- For vehicles manufactured on and after March 14, 2005 and certified to FMVSS No. 202a, S4.2.2 of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver with a disability.

3. Reasons for Denying Bruno's Petition To Expand the Exemption for Vehicle Passenger Positions To Include Paragraphs S4.2.1(a) and S4.2.2 Through S4.2.7

In its petition, Bruno requested that the exemption in 59 CFR 595.7 be expanded to include an exemption for paragraphs S4.2.1 through S4.2.7 of FMVSS No. 202a for all vehicle passenger positions. NHTSA, however, is proposing to limit the scope of the exemption to paragraph S4.2.1(b) (minimum height requirement). The other requirements listed in the paragraphs referenced by Bruno include:

- A requirement that the front head restraints be able to attain a height of at least 800 mm in at least one position of adjustment (*see* paragraph S4.2.1(a)).
- Width requirements similar to those listed in the current version of FMVSS No. 202 (*see* paragraph S4.2.2).
- New requirements limiting the distance between the back of the occupant's head and the head restraint on front head restraints (*see* paragraph S4.2.3).
- Limits on the size of gaps and openings in front restraints (*see* paragraph S4.2.4).
- New energy absorption criteria (*see* paragraph S4.2.5).
- New height retention criteria (*see* paragraph S4.2.6).
- Certain height, strength, position retention, and energy absorption levels for voluntarily installed rear head restraints (*see* paragraph S4.2.7).

Bruno's petition described the potential problems if the TAS must adhere to all provisions of Standard No. 202a. Essentially, the problem was that the head restraint, attached to the TAS, would be too large, when installed in some vehicles, to clear the door frame on its path to provide an easy-to-access seat for a mobility-impaired driver or passenger.

Our reason for denying the petition for an exemption for the requirements in Standard No. 202a, other than S4.2.1(b), is that Bruno has not provided a rationale for expanding the exemption to cover those areas of Standard No. 202a. Furthermore, most of these requirements are not dimensional in nature, and should not affect the ability of systems such as the TAS to enter and exit the vehicle. While the requirement in paragraph S4.2.1(a) is dimensional, it is a requirement that the head restraint be able to reach a certain height in only one position of adjustment. Therefore, because the head restraint can be lowered from that height, it should not interfere with the ability of the TAS to enter or exit the vehicle. We also note that the requirement in S4.2.2 is dimensional, and is discussed below.

As Bruno stated in its petition:

> [S]ince the entire seat rotates and exits the vehicle while assisting the occupant's access, *clearance between the top of the head restraint and the door opening* can restrict the number of viable vehicle applications. In first row applications, the rearward-slanted A-pillar is often the controlling feature for seat head restraint clearance with a large radius joining the top of the door opening. The *increased head restraint height of FMVSS 202a will significantly reduce the number of vehicle applications* where people with disabilities will have safe vehicle access with a Bruno TAS seat. [emphasis added]

Based on this statement, NHTSA understands the need for an exemption

for the head restraint height requirement in FMVSS No. 202a, S4.2.1(b). However, Bruno did not provide reasons that the other requirements of FMVSS No. 202a (*i.e.,* those listed in paragraphs S4.2.1(a) and S4.2.2 through S4.2.7) would impede installation of the TAS. Therefore, in keeping with our desire to keep the exemptions as narrow as possible, we are not proposing to provide exemptions for these other requirements.

NHTSA notes that Bruno did not provide a rationale for why an exemption for the width requirement is needed for the passenger seat. However, because the A-pillar slopes forward as it heads toward the roof of the vehicle, it is possible that the width of the head restraint (as required by paragraph S4.2.2) may also cause the A-pillar to interfere with the TAS as it attempts to exit and enter the vehicle. Therefore, we request comment on whether an exemption from S4.2.2 of FMVSS No. 202a for the front outboard passenger seat should also be included in the final rule. Additionally, we request comments on whether any of the additional exemptions requested by Bruno may be relevant to facilitate mobility for persons with disabilities.

iii. Correcting Reference to Paragraph S4.3 of Standard No. 202

As discussed above, paragraph (c)(9) of 49 CFR part 595 contains a make inoperative exemption for FMVSS No. 202, *Head Restraints.* The current exemption was added as part of the original rulemaking creating part 595 on February 27, 2001.[4] This exemption currently reads: ''S4.3(b)(1) and (2) of 49 CFR 571.202, in any case in which the driver's head restraint must be modified to accommodate a driver with a disability.''

The sections of FMVSS No. 202 (the version in place in 2001 when the make inoperative exemptions were put into place) to which the above section refers read: ''S4.3(b) It shall, when adjusted to its fully extended design position, conform to each of the following: (1) When measured parallel to torso line, the top of the head restraint shall not be less than 700 mm above the seating reference point; (2) When measured either 64 mm below the top of the head restraint or 635 mm above the seating reference point, the lateral width of the head restraint shall not be less than i. 254 mm for use with bench-type seats; and ii. 171 mm for use with individual seats;''

Since the make inoperative exemption for FMVSS No. 202 was first put in place, NHTSA has changed and upgraded FMVSS No. 202. There are two parts to this change. First, on December 14, 2004, NHTSA published FMVSS No. 202a (69 FR 74883), which is an updated version of FMVSS No. 202 and subject to a phase-in, becomes mandatory beginning on September 1, 2009. Manufacturers also have the option to comply with FMVSS No. 202 or FMVSS No. 202a during an interim period. Second, the current version of FMVSS No. 202 (which, at the manufacturer's option, is applicable to vehicles manufactured during this interim period) has been updated to allow manufacturers to comply with either the existing version of FMVSS No. 202, ECE 17, or FMVSS No. 202a. The December 14, 2004 final rule also changed the paragraph numbering of FMVSS No. 202. The requirements that were formerly given in S4.3 are now located in S4.2. Because of these changes, it is necessary to update the make inoperative exemption to be consistent with the numbering in the current FMVSS No. 202. Therefore, NHTSA is proposing to correct § 595.7(c)(9) to account for this change.

As § 595 may be applied to vehicles certified under different versions of Standard No. 202 (depending on the vehicle's date of manufacture), NHTSA is proposing an amendment to split this part of the exemption into two parts. The proposed regulatory text for the portion of 49 CFR 595.7(c)(9) at issue is:

- For vehicles manufactured before March 14, 2005, S4.3(b)(1) and (2) of 49 CFR 571.202, in any case in which the driver's head restraint must be modified to accommodate a driver with a disability.
- For vehicles manufactured on or after March 14, 2005 and certified to FMVSS No. 202, S4.2(b)(1) and (2) of 49 CFR 571.202, in any case in which the head restraint must be modified to accommodate a driver with a disability.

This text will have the same effect as the text in 595.7(c)(9) does currently. However, it will help to alleviate the confusion currently caused by the fact that the text references only paragraph S4.3, which now lists items incorporated by reference in the current version of the CFR. For vehicles manufactured before March 14, 2005, the reference will continue to point to S4.3, the proper paragraph of the CFR as it existed at the time the vehicle was certified. For vehicles manufactured after that date, the reference will point to paragraph S4.2, which is the correct citation of the CFR as it existed when those vehicles were certified.

III. Proposed Effective Date

Because this proposal would remove a restriction on the modification of vehicles for persons with disabilities, NHTSA anticipates making this amendment effective 30 days after the publication of a final rule under the Administrative Procedure Act, 5 U.S.C. 553(d).

IV. Rulemaking Analysis

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' NHTSA has analyzed this proposal and determined that it is not considered to be significant under E.O. 12866 or the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). NHTSA has also determined that the effects are so minor that a separate regulatory evaluation is not needed to support the subject rulemaking. For this particular proposal, no costs will be imposed by the agency's actions. The cost of doing business for the vehicle modification industry will not be changed by the subject proposal, and if anything, there could be a cost savings due to the proposed exemptions.

Modifying a vehicle in a way that degrades the performance of head restraints could produce some negative safety effects for the occupants of the vehicle. However, the number of vehicles potentially modified would be very few in number, and the agency believes any disbenefits would be minimal. This is essentially the trade-off that NHTSA is faced with when increasing mobility for persons with disabilities—when necessary vehicle modifications are made, some safety may unavoidably be lost to gain personal mobility.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small

[4] It should be noted that in the original rulemaking establishing Part 595, the exemption erroneously referred to paragraphs S3(b)(1) and S3(b)(2) of FMVSS No. 202, which do not exist. This was changed to S4.3(b)(1) and S4.3(b)(2) in a correction notice issued April 20, 2004 (69 FR 21069).

entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this proposed rule under the Regulatory Flexibility Act. Most dealerships and repair businesses are considered small entities, and a substantial number of these businesses modify vehicles to accommodate individuals with disabilities. I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. While most dealers and repair businesses would be considered small entities, the proposed exemption would not impose any new requirements, but would instead provide additional flexibility. Therefore, a Preliminary Regulatory Flexibility Analysis is not required.

Executive Order 13132 (Federalism)

NHTSA has examined today's NPRM pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have federalism implications because the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

As this proposal is only to provide an exemption from a Federal requirement, we do not foresee that it will have any preemptive effect on State laws. We are unaware of any State law that would prohibit the actions permitted by this rule under Federal law.

Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, *Executive Order 12988* specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

Pursuant to this Order, NHTSA notes as follows. The preemptive effect of this rule is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. No voluntary standards exist regarding this proposed exemption for modification of vehicles to accommodate persons with disabilities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This proposed exemption would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of $100 million annually.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal does not contain any new reporting requirements or requests for information.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

V. Proposed Regulatory Text

List of Subjects in 49 CFR Part 595

Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, we propose to amend 49 CFR part 595 as follows:

PART 595—MAKE INOPERATIVE EXEMPTIONS

1. The authority citation for part 595 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

2. Amend § 595.7 by revising paragraphs (c)(8) and (c)(9) to read as follows:

§ 595.7 Requirements for vehicle modifications to accommodate people with disabilities.

* * * * *

(c) * * *

(8) 49 CFR 571.202 and 571.202a, in any case in which:

(i) A motor vehicle is modified to be operated by a driver seated in a wheelchair and no other seat is supplied with the vehicle for the driver;

(ii) A motor vehicle is modified to transport a right front passenger seated in a wheelchair and no other right front passenger seat is supplied with the vehicle; or (9) (i) For vehicles manufactured before March 14, 2005, S4.3(b)(1) and (2) of 49 CFR 571.202, in any case in which the driver's head restraint must be modified to accommodate a driver with a disability.

(ii) For vehicles manufactured on or after March 14, 2005 and certified to FMVSS No. 202, S4.2(b)(1) and (2) of 49 CFR 571.202, in any case in which the head restraint must be modified to accommodate a driver with a disability.

(iii) For vehicles manufactured on and after March 14, 2005 and certified to FMVSS No. 202a, S4.2.1(b) of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver or a front outboard passenger with a disability.

(iv) For vehicles manufactured on and after March 14, 2005 and certified to FMVSS No. 202a, S4.2.2 of 49 CFR 571.202a, in any case in which the head restraint must be modified to accommodate a driver with a disability.

* * * * *

Issued: December 10, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–29889 Filed 12–17–09; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 74, No. 242

Friday, December 18, 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

Forest Service

Information Collection; Public Support for Fuel Reduction Policies: Multimedia Versus Printed Materials

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested people and organizations on the extension of a currently approved information collection, Public Support for Fuel Reduction Policies: Multimedia Versus Printed Materials.

DATES: Comments must be received in writing on or before February 16, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Armando González-Cabán, Pacific Southwest, Research Station, Forest Service, USDA, 4955 Canyon Crest Drive, Riverside, CA 92507.

Comments also may be submitted via facsimile to 951–680–1501 or by e-mail to *agonzalezcaban@fs.fed.us.*

The public may inspect comments received at Pacific Southwest Research Station, Building One reception area, Forest Service, USDA, 4599 Canyon Crest Drive, Riverside, CA, during normal business hours. Visitors are encouraged to call ahead to 951–680–1501 to assist entry into the building.

FOR FURTHER INFORMATION CONTACT: Armando González-Cabán, Pacific Southwest Research Station, USDA Forest Service, 951–680–1525. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Public Support for Fuel Reduction Policies: Multimedia Versus Printed Materials.

OMB Number: 0596–0203.

Expiration Date of Approval: March 31, 2010.

Type of Request: Extension of a currently approved collection.

Abstract: This information collection is being undertaken to solicit information on public support of two fuel reduction programs: prescribed burning and mechanical treatment. Researchers will evaluate the responses of California and Montana residents to different scenarios related to fire hazard reduction programs, determine how effective residents think the programs are, and calculate how much residents would be willing to pay to implement the alternatives presented to them.

The results of the survey will allow researchers to provide better information to natural resource, forest, and fire managers when they are contemplating the kind and type of fire hazard reduction program to implement to achieve forestland management planning objectives. In addition, the survey will assist forest and fire managers in developing educational and outreach material for forest homeowners, schools, public meetings, and State and Private Forestry extension programs.

To gather the information, a stratified random sample of California and Montana residents will be contacted by telephone through a random-digit dialing process. Those contacts who agree to participate in the study will be asked an introductory set of questions to determine their pre-existing knowledge of fuels reduction treatments. The respondents will be informed that a more in-depth, self-administered video questionnaire will be mailed to them.

Upon receipt of the video, participants will also be asked to watch the videotape; answer questions on the attached answer sheet; and return the answer sheet to the Forest Service researchers in a postage-paid, preaddressed envelope included with the initial mailing. After 2 weeks, a reminder post card will be sent to all participants who have not responded. A week later, a second, duplicate videotape will be sent to all participants who have not responded. After resending the duplicate video, no additional contact will take place with participants.

The information will be collected by a university research survey center and will be analyzed by a Forest Service researcher and a researcher at a cooperating university who are experienced in applied economic nonmarket valuation research and survey research.

At present the Forest Service, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, and many State agencies with fire protection responsibilities are planning to embark on ambitious and costly fuels reduction program for fire risk reduction without a clear understanding of the public's opinion on which treatments are most effective or even desirable.

Information collected in this research will help natural resource and fire managers to better understand the public's opinions on fuels reduction activities and what type of media could be more effective in conveying information to the public.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: Stratified random sample of heads of households.

Estimated Annual Number of Respondents: 1,000.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: December 14, 2009.

Ann Bartuska,

Deputy Chief, Research & Development.

[FR Doc. E9–30105 Filed 12–17–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0089]

Notice of Request for Extension of Approval of an Information Collection; Imported Seed and Screenings

AGENCY: Animal and Plant Health Inspection Service, USDA.

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

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for importation of seed and screenings.

DATES: We will consider all comments that we receive on or before February 18, 2010.

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-2009-0089*) 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-2009-0089, 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-2009-0089.

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

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

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of seed and screenings, contact Mr. Rodney Young, Botanist, Plant Protection and Quarantine, Seed Examination Facility, Bldg. 580, BARC-E, Beltsville, MD 20705; (301) 504-8605; ext. 254. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Imported Seed and Screenings.

OMB Number: 0579-0124.

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

Abstract: Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's regulations implementing the provisions of title III of the FSA are found in 7 CFR part 361.

The regulations involve the use of information collection activities, including declaration of importation, container labeling, notification of seed location, a seed return request, seed analysis certificates (PPQ Form 925), a compliance agreement (PPQ Form 519), seed identity maintenance, and associated recordkeeping.

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

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

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

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.3553743 hours per response.

Respondents: Importers of seed and screenings, seed cleaning/processing facility personnel, officials of the Canadian Food Inspection Agency (CFIA), and private seed laboratories accredited by CFIA.

Estimated annual number of respondents: 1,168.

Estimated annual number of responses per respondent: 23.099315.

Estimated annual number of responses: 26,980.

Estimated total annual burden on respondents: 9,588 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 11th day of December 2009.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–30127 Filed 12–17–09; 7:49 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Intent To Prepare an Environmental Impact Statement, Fernow Experimental Forest, Tucker County, WV

AGENCY: Department of Agriculture, Forest Service

ACTION: Notice of intent to prepare an Environmental Impact Statement, Fernow Experimental Forest, Tucker County, WV.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose environmental impacts of proposed actions to continue long-term research on the Fernow Experimental Forest, and to manage the Fernow Experimental Forest for long-term ecological research. The purpose of the proposed research is to evaluate the effectiveness of silvicultural tools that include harvesting, herbicide control of vegetation, fertilization and prescribed burning on central Appalachian forests,

to better understand ecological dynamics within these forest ecosystems, and to develop management tools, practices and guidelines for central Appalachian hardwood forests.

The 4,700-acre Fernow Experimental Forest is situated within the boundary of the Monongahela National Forest in Tucker County, West Virginia and is managed by the Northern Research Station of the USDA Forest Service. These proposed research activities are in compliance with the Monongahela 2006 Revised Forest Plan, which provides overall guidance for management of the area, including direction for management of the Fernow Experimental Forest, and with planning documents of the Northern Research Station and Fernow Experimental Forest.

Public Involvement: The public is invited to comment on the Proposed Action during the analysis process. In order to best use your comments, please submit them in writing within 30 days of this announcement. Additional information is available on the Web at *http://nrs.fs.fed.us/ef/locations/wv/fernow/EIS.* Comments may also be submitted electronically at the above Web address.

DATES: Comments concerning the scope of the analysis must be received no later than January 19, 2010. The draft EIS is expected to be filed with the Environmental Protection Agency and available for public review in March 2010. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the draft EIS in the **Federal Register**. The final EIS is expected in June 2010.

ADDRESSES: Send written comments to USDA Forest Service, Timber and Watershed Laboratory, Attn: Fernow EIS, P.O. Box 404, Parsons, WV 26287. Comments may also be submitted on-line at *http://nrs.fs.fed.us/ef/locations/wv/fernow/EIS* or via facsimile to 304–478–8692.

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.

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.

FOR FURTHER INFORMATION CONTACT: Mary Beth Adams, Project Leader, USDA Forest Service, Northern Research Station, P.O. Box 404, Parsons, WV 26287; (304) 478–2000; *mbadams@fs.fed.us.*

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:

Purpose and Need for Action

Sound management of Appalachian hardwood forests is important for maintaining the productivity and diversity of these woodlands, and to sustain their value for the many owners and users of forest land throughout the Appalachians. To achieve these goals, management guidelines based on sound scientific research are needed. Often it is necessary that this research be long-term in scope and duration to adequately describe long-lived forests. Accordingly, to meet these information needs, the purpose of the proposed actions is to (1) conduct research on the effects of various silvicultural practices on forest productivity, species composition and diversity, wildlife populations and ecosystems processes, and (2) manage the Fernow Experimental Forest for long-term ecosystem research.

Proposed Action

The proposed action involves using the following silvicultural treatments in on-going research studies: Diameter-limiting cutting treatment on 94 acres, single-tree selection on 121 acres, financial maturity harvesting on 214 acres, 93 acres of small clearcuts, group selection on 31 acres, and prescribed fire on 562 acres. Other treatments include fertilization of about 101 acres using ammonium sulfate fertilizer, herbicide treatment of selected trees and invasive exotic plants, and maintenance of roads and other infrastructure.

Responsible Official

The responsible official is the Project Leader of NRS–01, USDA Forest Service, Northern Research Station, P.O. Box 404, Parsons, WV 26287.

Nature of Decision To Be Made

The decision to be made is whether or not to conduct research and management activities, including harvest, prescribed fire, fertilization, and herbicide treatments, on approximately 1,227 acres of the Fernow Experimental Forest during a 5-year period, to meet the purpose and need for action through some other combination of activities, or to take no action at this time.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by the proposed research activities, by contacting persons and organizations on the Fernow's mailing list and publishing a notice in the local newspaper. No scoping meetings are planned at this time. The present solicitation is for comments on this Notice of Intent and scoping materials. Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to identify questions and issues regarding the proposed action. An issue is defined as a point of dispute, debate, or disagreement related to a specific proposed action based on its anticipated effects. Significant issues brought to our attention are used during an environmental analysis to develop alternatives to the proposed action.

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.

Dated: December 11, 2009.

Mary Beth Adams,

Project Leader, NRS–01.

[FR Doc. E9–30057 Filed 12–17–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Forest System Land Management Planning

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service, U.S. Department of Agriculture, is giving notice of its intent to prepare an environmental impact statement to analyze and disclose potential environmental consequences associated with a National Forest System land management planning rule.

DATES: Comments concerning the scope of the analysis must be received by February 16, 2010. The Forest Service (Agency) expects to publish the draft environmental impact statement in December 2010 and the final environmental impact statement in October 2011. The U.S. Department of Agriculture (Department) expects to publish the record of decision in November 2011.

ADDRESSES: Comments may be sent via e-mail to *fspr@contentanalysisgroup.com.* Written comments concerning this notice should be addressed to Forest Service Planning NOI, C/O Bear West Company, 172 E 500 S, Bountiful, UT 84010; or via facsimile to 801–397–1605. All comments, including names and addresses, when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments at *http://contentanalysisgroup.com/fsr/.*

FOR FURTHER INFORMATION CONTACT: Larry Hayden, 202–205–0895, *lhayden@fs.fed.us.*

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 Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

A new Agency planning rule is needed to guide land managers in developing, amending, and revising land management plans for the 155 national forests and 20 grasslands in the National Forest System (NFS). A new planning rule provides the opportunity to help protect, reconnect, and restore national forests and national grasslands for the benefit of human communities and natural resources. Developing a new rule will allow the Agency to integrate forest restoration, watershed protection, climate resilience, wildlife conservation, the need to support vibrant local economies, and collaboration into how the Agency manages national forests and grasslands, with the goals of protecting our water, climate, and wildlife while enhancing ecosystem services and creating economic opportunity. Land management planning is also one way the Agency complies with requirements under the National Forest Management Act of 1976 (NFMA), the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), the Endangered Species Act (ESA), the Wilderness Act of 1964, and other legal requirements.

An environmental impact statement (EIS) is being prepared to document the environmental analysis for a new planning rule at Title 36, Code of Federal Regulations, part 219 (36 CFR part 219). In the interim, the Agency will use the 2000 rule provisions to develop, amend, or revise plans until a new planning rule is released. The 2000 rule had been replaced by the 2008 planning rule which was subsequently held invalid by a Federal District Court. The 2000 planning rule removed and replaced the 1982 planning rule in the Code of Federal Regulations, preventing the Agency from being able to simply reinstate the 1982 rule, but the 2000 rule contains transition provisions which permit the use of the 1982 rule provisions. No national forest or grassland has ever used the 2000 rule to amend or revise a plan because of its complexity. The Department is announcing the reinstatement in the Code of Federal Regulations of the National Forest System Land and Resource Management Planning Rule of November 9, 2000, as amended (2000 rule), elsewhere in the **Federal Register**. The Agency's expectation, based upon its experience with the 2000 rule, is that national forests and grasslands will use the 1982 rule provisions, as permitted by the transition provisions of the 2000 rule, to revise and amend plans until a new planning rule is issued.

Scoping Process

This notice of intent 60-day comment period starts the scoping process in compliance with the National Environmental Policy Act (NEPA) and its implementing regulations at 40 CFR part 1500. As part of the scoping process, the Agency solicits public comment on the scope of the proposed rule; the alternatives to be considered; and the physical, biological, social, and economic effects that should be analyzed in the draft environmental impact statement. Following the review of comments received during this 60-day period, the Agency will continue to collaboratively engage the public in a variety of ways as it develops a new proposed planning rule. Discussions will focus on key issues raised during the notice of intent public comment period. The Agency is in the process of creating a Web forum for additional dialogue and public interaction. Further information on planned collaborative discussions and other opportunities for public comment are available at *http://www.fs.usda.gov/planningrule.*

Comments Requested

The proposed action lists several principles that could be included in a new planning rule and a number of follow-up questions to help frame the options for a proposed rule. Please comment on what features you believe should be in a planning rule, whether the principles we have identified are the right principles, and whether we have included all of the issues that will need to be considered as a new planning rule is developed. Please also respond to the specific questions posed under the principles outlined below.

The Agency will use the comments and input we receive to identify issues, develop alternatives, and build planning rule content leading to a proposed rule and draft environmental impact statement in the fall of 2010. The Agency will continue to solicit public input through a collaborative process as the proposed rule is developed. Further, we need to hear your thoughts on the best ways the Agency could engage the public during this process.

Purpose and Need for Action

The NFMA requires regulations ''under the principles of the Multiple-Use, Sustained-Yield Act of 1960, that set out the process for the development and revision of the land management plans, and the guidelines and standards'' the Act prescribes (16 U.S.C. 1604(g)). In 1979, the Department first issued regulations to comply with this statutory requirement. The 1979 regulations were superseded by the 1982 planning rule, which has formed the basis for all existing land management plans.

In 1989, the Agency initiated a comprehensive Critique of Land Management Planning, which identified a number of adjustments that were needed to the 1982 planning rule. The Critique found that the 1982 planning rule process was very complex; had significant costs, was lengthy, and was cumbersome for public input. The recommendations in the Critique and the Agency's experiences with planning led to the Agency issuing an advance notice of proposed rulemaking for new regulations in 1991, and two proposed rules, in 1995 and 1999.

After working with a committee of scientists, the Department issued the 2000 rule to revise the 1982 regulations. The 2000 revision of the planning rule described a new framework for NFS planning; made sustainability the foundation for NFS planning and management; required the consideration of the best available science during the planning process, and set forth requirements for implementation, monitoring, evaluation, amendment, and revision of land and resource management plans. However, a review

in the spring of 2001 found that the 2000 rule was costly, complex, and procedurally burdensome. The results of the review led the Department to issue a new planning rule in 2005, and a revised version again in 2008, but each of those rules was held invalid by a Federal District Court (*Citizens for Better Forestry* v. *USDA,* 481 F. Supp.2d 1059 (N.D. Cal. 2007) (2005 rule); *Citizens for Better Forestry* v. *USDA,* 632 F. Supp.2d 968 (N.D. Cal. 2009) (2008 rule)).

The NFMA requires the Agency to revise land management plans ''at least every 15 years.'' The NFS has 127 land management plans. Currently, 68 plans are past due for plan revision. Most plans were developed between 1983 and 1993 and should have been revised between 1998 and 2008. The Agency now has an urgent need to establish a planning rule that protects, reconnects, and restores national forests and grasslands for the benefit of human communities and natural resources.

A new planning rule must be responsive to the challenges of climate change; the need for forest restoration and conservation, watershed protection, and wildlife conservation; and the sustainable use of public lands to support vibrant communities. It must be clear, efficient, and effective, and must meet requirements under the NFMA, as well as allow the Agency to meet its obligations under the MUSYA, the ESA, and the Wilderness Act, as well as other legal requirements. It also must provide for a transparent, collaborative process that allows for effective public participation. A new rule should also be within the Agency's capability to implement on all NFS units. With stability in planning regulations, national land management planning can regain momentum, and units will be able to complete timely revisions that guide sustainable management.

For further information on the history of land management planning and why the Agency is preparing a new EIS see the Web site at *http://www.fs.usda.gov/planningrule.*

Proposed Action

The NFMA at 16 U.S.C. 1604 requires the Agency to have a planning rule. The Forest Service is proposing the development of a new planning rule to be issued at 36 CFR part 219. The new rule will consist of procedures for developing, amending, and revising land management plans.

We list below a number of principles based on substance and process that could be used to guide the development of a new planning rule. Through this notice of intent, we are seeking public input on these principles and associated questions. We also ask reviewers to identify and give input on any principles or issues not mentioned. Additionally, we are seeking input on whether we have included a full list of the issues that must be addressed in a new rule and how best to address existing and future issues and challenges.

Substantive Principles for a New Rule

1. Land management plans could address the need for restoration and conservation to enhance the resilience of ecosystems to a variety of threats. Climate change; alterations of natural fire regimes; changing water conditions; aggressive insects, disease, and invasive species; increasingly intense floods and drought; increasing air and water pollution; increasing development pressures; and other factors threaten the health of forests and grasslands. When the health and integrity of our lands deteriorate, so do the environmental, economic, and social benefits they provide, with enormous potential impacts on drinking water, greenhouse gas emissions, climate, wildlife, recreation, community health, and prosperity. Plans could promote restoration and management of national forests and grasslands to make them more resilient to these threats, and to ensure the continued delivery of important ecosystem services and benefits. They could also promote the active conservation of healthy lands to prevent them from degrading and to strengthen overall resiliency.

Specific questions we would like the public to address include:

- What do you see as the biggest threats to forest and grassland health and ecosystem resiliency?
- How do you define restoration? What is your concept of restoration? How can the planning rule foster restoration of NFS lands?
- What kinds of conservation efforts can enhance ecosystem resiliency and prevent degradation?

2. Plans could proactively address climate change through monitoring, mitigation and adaptation, and could allow flexibility to adapt to changing conditions and incorporate new information. Climate change is one of the great challenges facing the United States and the world, and is dramatically reshaping how the Agency will deliver on its mission of sustaining the health and diversity of the nation's forests. Management will need to restore ecosystem resiliency, and also factor adaptation and mitigation strategies into planning and project development. Plans will need to be innovative, integrate climate change and watershed management, and use climate change as a theme under which to integrate and streamline existing national and regional strategies for ecological restoration, fire and fuels, forest health, biomass utilization, and others. Plans could also include clear monitoring programs and incorporate evolving research in order to develop science-based understanding around climate change impacts and adaptation and mitigation efforts.

Plans will need to anticipate climate change-related uncertainty and be adaptive to new science and knowledge about changing conditions on the ground. Responsible officials will also need flexibility to be able to adjust plan objectives and requirements where there are circumstances outside of agency control: For example, where increasing water temperatures resulting from climate change make it impossible to maintain a sensitive fish species in its native habitat. Incorporating this concept of adaptive management into the planning rule will be especially important as we increase our understanding of climate change and how it will impact the landscape, but will also be important to respond to and apply new information regarding water conservation, insect and disease, species conservation, threats from catastrophic wildfire, and impacts from the loss of open space.

Specific questions we would like the public to address include:

- How can the planning rule be proactive and innovative in addressing the need for climate change adaptation and mitigation?
- What kinds of data, research, and monitoring could assist land management planners to incorporate climate change adaptation considerations into plans?
- How should the planning rule address uncertainty? How do other public and private entities recognize and incorporate uncertainty in their planning efforts?
- How can a new planning rule appropriately build in the flexibility land managers will need to adapt to changing science, information or conditions? What mechanisms should be used to incorporate new data? Do you know of any successful adaptive management regimes that can inform our process?
- How should plans anticipate and address changing conditions or impacts outside of agency control? How can external factors be incorporated or recognized in plan guidance and requirements?

3. Land management plans could emphasize maintenance and restoration of watershed health, and could protect and enhance America's water resources. Responding to the challenges of climate change in providing water and water-related ecosystem services is one of the most urgent tasks facing the Agency. The NFS alone is the source of fresh water for more than 60 million people from coast to coast. In coming decades, climate change; impacts from catastrophic fire and tree mortality; the increasing intensity of weather patterns; events including droughts and storms; increasing pollution; and increasing development pressures will combine to impact the quantity, availability, and quality of America's water resources and the health of its watersheds. Plans could promote the restoration and maintenance of watersheds to ensure abundant clean water, the protection of soils, and the health of aquatic and terrestrial ecosystems.

Specific questions we would like the public to address include:

- Should a new planning rule include standards to address watershed health? If so, what might those look like? Should the Agency be held accountable only for actions and problems on its NFS lands or take into account water availability and quality factors that are outside of the Agency's control?
- What planning or management guidance could the Agency incorporate in the rule to protect and enhance water resources?
- One way to approach planning for an NFS unit is to think about the future of the planning area through the context of its watersheds. Do you see benefits and/or drawbacks to a rule requiring land management planning on a watershed basis?
- Do you see benefits or drawbacks to a rule requiring adherence to regionally specific Best Management Practices?

4. Plans could provide for the diversity of species and wildlife habitat. The NFS is a refuge for numerous species, including 425 threatened and endangered species. The NFMA directs the Agency to provide ''for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives * * *'' (16 U.S.C. 1604(g)(3)(B)). Over time, the Agency's planning rules have sought to meet this statutory requirement to provide for diversity in a number of ways.

The 1982 planning rule required management prescriptions to provide for diversity as well as additional prescriptions to provide for the viability of native vertebrates and desired non-native vertebrate species. The 2000 planning rule required (with qualifications) ecological conditions that provide a ''high likelihood'' that conditions are capable of supporting viability of native and desired non-native species over time. In addition, the 2000 planning rule included detailed and complex analytical requirements regarding ecological sustainability in terms of ecosystem and species diversity (ecological sustainability), including identification of ''focal species'' and ''species at risk.'' The 2005 and 2008 planning rules required plans to provide a framework for contributing to ecological sustainability, in terms of ecosystem diversity and (where necessary) species diversity, in terms of ''species of interest,'' and ''species of concern.'' These two rules had much less detail than the 2000 rule with additional detail set forth in the Forest Service Directive System.

The Agency faced a number of challenges in implementing the species viability requirements of the 1982 rule. These challenges will be exacerbated as climate change affects the range and viability of species, both flora and fauna. In anticipation of coming changes, the Agency must look at new ways to meet diversity requirements.

The new rule needs to provide planning procedures that meet the intent of NFMA to provide for diversity in a way that achieves protection for species, habitats, and ecosystems while taking into account environmental and management factors and impacts that are outside of the Agency's control.

Specific questions we would like the public to address include:

- How should the new rule provide for diversity?
- How should the planning rule guide protection of at-risk species of animals and plants and their habitat?
- How can the new planning rule account for variables outside of Agency control, including those impacts that are the result of climate change?
- Should species diversity provisions in planning look beyond the individual unit to a watershed or landscape scale, and if so, what is a practical and workable way to incorporate a broader perspective?
- How could wildlife habitat monitoring be addressed in a planning rule?

5. Plans could foster sustainable NFS lands and their contribution to vibrant rural economies. Forests and grasslands offer enormous environmental benefits, including clean air, clean and abundant water, wildlife habitat, carbon sequestration, erosion control, and other ecosystem services. They generate economic value by attracting tourism and recreation visitors; sustaining green jobs; and producing timber, other forest products, minerals, food, and energy, both renewable and non-renewable. They are also of immense social importance; they enhance rural quality of life, sustain scenic and culturally important landscapes, oftentimes define the essence of a community, and provide opportunities to engage in outdoor recreation and reconnection with the land. The Agency recognizes the interdependence of these ecological, economic, and social values and the need for land management planning to take all three into account.

In pursuit of sustainable management in the new planning rule, the Agency proposes to include provisions for the protection and enhancement of ecosystem services, such as clean water, clean air, and wildlife habitat. It also proposes that plans could provide a sustainable set of opportunities for goods and services that will support vibrant rural and national economies in a way that is compatible with natural resource conservation and restoration goals.

Specific questions we would like the public to address include:

- How can the planning rule reflect the interdependency of social, economic, and ecological systems in a way that supports sustainable management of national forests and grasslands?
- How can the Agency recognize and incorporate provisions in the planning rule for managing lands for the sustainable delivery of ecosystem services?
- How can plans guide units of the NFS in achieving natural resource conservation and restoration goals in a way that is compatible with providing a set of opportunities for goods and services to support vibrant rural and national economies?

Process Principles for a New Rule

1. Land management planning could involve effective and pro-active collaboration with the public. NFS lands are the public's lands that the Agency manages in trust for current and future generations. The Agency welcomes and encourages public collaboration throughout the planning process, and will seek to structure a new planning rule to ensure that processes for developing, revising and amending plans are efficient, transparent, and effectively engage the public. After plans are approved, responsible officials will continue to work with the public to resolve issues, to evaluate management

under the plan, and to consider whether there is a need to adjust the plan. One challenge the Agency has faced with regard to public participation is that plans can at times take 8–10 years to revise, a timeframe that is too long to sustain a true collaborative effort and use the most up-to-date science and management thinking.

Specific questions we would like the public to address include:

• How could the Agency foster collaborative efforts? What kinds of participation, forums for collaboration, and methods of providing input have you found most engaging?

• What should the rule require to ensure a planning process that is both efficient and transparent while allowing for full public collaboration and participation within a reasonable timeframe?

• What kinds of information, methods, and analyses should the Agency provide to the public during the planning process to aid understanding of the possible consequences of a proposed rule and alternatives?

• What kind of administrative review process should be offered to the public in the planning rule? Should there be a pre-decisional objection or a post-decisional appeal process?

2. Plans could incorporate an ''all-lands'' approach by considering the relationship between NFS lands and neighboring lands. The threats and opportunities facing our lands and natural resources do not stop at ownership boundaries. Healthy forests and grasslands are elements of integrated landscapes that need to be restored, conserved and managed across geographical and organizational boundaries in ways that respect private rights and multiple ownerships. The land management planning process provides direction for NFS lands only. However, the planning process provides an opportunity for the Agency to engage other Federal land management agencies; Tribes, State, and local land managers; private landowners; and non-governmental partners to collaborate on strategies to restore and sustain healthy forests and grasslands across landscapes. Incorporating an all-lands approach in the planning process is also important as land management plans anticipate the effects of broad challenges such as climate change which can cause impacts on a regional scale.

Specific questions we would like the public to address include:

• How should the planning rule account for the relationship of NFS lands to surrounding landscapes?

• What other planning and assessment efforts or processes at the national, state or local level should the Agency look at that could inform an ''all-lands'' approach?

3. Plans could be based on the latest planning science and principles to achieve the best decisions possible. The new planning rule could encourage the creation of a shared vision of the planning area. Developing this through a strong collaborative public process could create a common understanding of the goals and direction for each plan, and will frame management actions and projects on the ground as a plan is implemented. Creating a plan that reflects a clear description of the shared *vision* and the desired conditions of a planning area, a *strategy* for moving toward the vision; and *design criteria,* including standards and guidelines that would apply to project and activity decisions, might be one way to move toward achieving the vision.

Specific questions we would like the public to address include:

• How can the planning rule support the creation of a shared vision for each planning area through the planning process?

• Local and regional differences will have an impact on desired conditions and on the successful creation and implementation of a shared vision for any given planning area. Given that different areas will have different needs, should the planning rule allow a choice of planning processes? How could the planning rule create different process choices, and how could they be presented in the rule? What kinds of provisions would need to be included to guide and evaluate a process choice?

• Much discussion has been centered on how land management plans should be viewed; are they strategic documents that lay the foundation for specific future actions to help meet unit goals? Or, should land management plans also make project or activity decisions?

• Based on your response to the question above, what is the range of options for fully complying with NEPA during land management plan development, amendment, or revision?

• Should the new planning rule require standards and guidelines that are required for all plans?

• How can the agency analyze and describe the environmental effects of a planning rule in the environmental impact statement?

Possible Alternatives

The Agency will identify a proposed action and a no-action alternative as it develops an EIS. Additional alternatives have not been identified, but will be developed based on the comments that are received. The Agency will frame issues and alternatives during the scoping and public comment periods in the NEPA process.

Responsible Official

The responsible official is the Under Secretary for Natural Resources and Environment, USDA, 1400 Independence Ave., SW., Washington, DC 20250.

Nature of Decision To Be Made

The responsible official will issue a land management planning rule.

Dated: December 14, 2009.

Harris D. Sherman,

Under Secretary, NRE.

[FR Doc. E9–30174 Filed 12–17–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of call for nominations 2010.

SUMMARY: The National Urban and Community Forestry Advisory Council, (NUCFAC) will be filling four positions that will be expiring at the end of December 2009, and one interim term position. Interested applicants may download a copy of the application and position descriptions from the U.S. Forest Service's Urban and Community Forestry Web site: *http://www.fs.fed.us/ucf/.*

DATES: Nomination(s) must be ''received'' (not postmarked) by January 29, 2010.

ADDRESSES: Nomination applications sent by courier should be addressed to: Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 1400 Independence Avenue, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Please submit electronic nomination(s) to: *nucfac_ucf_proposals@fs.fed.us.* The subject line should read: 2010 NUCFAC Nominations.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff or Mary Dempsey, Staff Assistant to National Urban and Community Forestry Advisory Council, 1400 Independence Avenue, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

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 Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Facsimiles will not be accepted as official nominations. E-mail or a courier service is recommended. Regular mail submissions must be screened by the Agency and may delay the receipt of the application up to a month.

A total of five positions will be filled. The following four positions will serve 3-year term appointments from January 1, 2010, to December 31, 2012. Positions to be filled are for:

- A member who is not currently an officer or employee of any government body living in a city with a population of less than 50,000 and who has experience and has been active in urban and community forestry.
- A member representing city/town government.
- One of two members representing a national non-profit forestry and/or conservation citizen organization.
- One of two members representing academic institutions with an expertise in urban and community forestry activities.

The fifth position will fill an interim term appointment (January 1, 2009 to December 31, 2010):

- A person representing forest products, nursery, or related industries.

Dated: December 9, 2009.

Robin L. Thompson,

Associate Deputy Chief, State and Private.

[FR Doc. E9–30113 Filed 12–17–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–337–804, A–533–813, A–560–802, A–570–851

Certain Preserved Mushrooms from Chile, India, Indonesia and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 1, 2009, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the People's Republic of China (PRC), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120-day) sunset reviews for these orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 and (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1998, the Department published the antidumping duty order on certain preserved mushrooms from Chile. *See Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Chile*, 63 FR 66529 (December 2, 1998). On February 19, 1999, the Department published the antidumping duty orders on certain preserved mushrooms from India, Indonesia, and the PRC. *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from India, 64 FR 8311 (February 19, 1999); Notice of Antidumping Duty Order: Certain Preserved Mushrooms from Indonesia*, 64 FR 8310 (February 19, 1999); and *Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms from the People's Republic of China*, 64 FR 8308 (February 19, 1999).

In 2003–2004, the Department conducted the first sunset review on imports of certain preserved mushrooms from Chile, India, Indonesia, and the PRC, pursuant to section 751(c) of the Act, and found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the same rates as found in the original investigations.[1] In November 2004, the U.S. International Trade Commission (ITC) determined, pursuant to section 751(c) of the Act, that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] Also in November 2004, the Department published a notice of continuation of these antidumping duty orders.[3]

On October 1, 2009, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the PRC, pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 74 FR 50776 (October 1, 2009) (*Notice of Initiation*).

The Department received a notice of intent to participate from the Coalition for Fair Preserved Mushroom Trade (the ''Coalition''), a domestic interested party, which is comprised of L.K. Bowman Company, a division of Hanover Foods Corporation, Monterey Mushrooms, Inc., The Mushroom Company (formerly Mushroom Canning Company), and Sunny Dell Foods, Inc., within the deadline specified in 19 CFR 351.218(d)(1)(i). The Coalition claimed interested party status under section 771(9)(C) of the Act as a manufacturer of a domestic like product in the United States.

The Department received a complete substantive response to the notice of initiation from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to any of the orders covered by these sunset reviews, nor was a hearing requested. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the PRC.

Scope of the Orders

The products covered under the Certain Preserved Mushrooms orders are imported whole, sliced, diced, or as stems and pieces. The ''preserved mushrooms'' covered under the orders are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers, including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water,

[1] *See Certain Preserved Mushrooms from Chile, India, Indonesia and the People's Republic of China: Final Results of Expedited Sunset Reviews of Antidumping Duty Orders*, 69 FR 11384 (March 10, 2004).

[2] *See Certain Preserved Mushrooms from Chile, China, India, and Indonesia*, 69 FR 63408 (November 1, 2004).

[3] *See Continuation of Antidumping Duty Orders on Certain Preserved Mushrooms form Chile, the People's Republic of China, India, and Indonesia*, 69 FR 67308 (November 17, 2004).

brine, butter or butter sauce. Included within the scope of these orders are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing. Also included within the scope of these orders, as of June 19, 2000, are marinated, acidified, or pickled mushrooms containing less than 0.5 percent acetic acid.

Excluded from the scope of these orders are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; and (4) frozen mushrooms. The merchandise subject to these orders was previously classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive. As of January 1, 2002, the HTSUS subheadings are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, 0711.51.0000.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Preserved Mushrooms from Chile, India, Indonesia, and the People's Republic of China'' from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memo), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on certain preserved mushrooms from Chile, India, Indonesia, and the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (percent)
Chile.	
Nature's Farm Products (Chile) S.A.	148.51
All–Others Rate	148.51
India.	
Agro Dutch Foods Ltd.	6.28
KICM (Madras) Ltd.*	14.91
Alpine Biotech Ltd.	243.87
Mandeep Mushrooms Ltd.	243.87
All–Others Rate	11.30
Indonesia.	
PT Dieng Djaya/PT Surya Jaya Abadi Perkasa	7.94
PT Zeta Agro Corporation	*revoked
All–Others Rate	11.26
PRC.	
China Processed Food I&E Co./Xiamen Jiahua I&E Trading Company, Ltd.	121.47
Tak Fat Trading Co.	162.47
Shenzhen Cofry Cereals, Oils, & Foodstuffs Co., Ltd.	151.15
Gerber (Yunnan) Food Co.	142.11
Jiangsu Cereals,Oils & Foodstuffs Group Import & Export Corporation	142.11
Fujian Provincial Cereals, Oils & Foodstuffs I&E Corp.	142.11
Putian Cannery Fujian Province	142.11
Xiamen Gulong I&E Co., Ltd.	142.11
General Canned Foods Factory of Zhangzhou	142.11
Zhejiang Cereals,Oils & Foodstuffs I&E Corp.	142.11
Shanghai Foodstuffs I&E Corp.	142.11
Canned Goods Co. of Raoping	142.11
PRC–wide Rate	198.63

*The Department conducted a changed circumstances review and found that KICM (Madras) Limited was the successor–in-interest to Hindustan Lever Limited (formerly known as Ponds (India) Ltd.). *See Certain Preserved Mushrooms from India: Final Results of Changed Circumstances Review*, 68 FR 6884 (February 11, 2003); *Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 10371 (March 7, 2002), unchanged in *Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review*, 67 FR 46172 (July 12, 2002).

*Effective February 1, 2002, the antidumping duty order with respect to PT Zeta Agro Corporation was revoked. *See Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from Indonesia and Final Determination to Revoke Order in Part*, 68 FR 39521 (July 2, 2003).

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: December 14, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–30156 Filed 12–17–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 57–2009]

Foreign-Trade Zone 202—Los Angeles, CA, Area Application for Reorganization/Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting authority to reorganize and expand its zone in the Los Angeles area within and adjacent to the Los Angeles-Long Beach Customs and Border Protection port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 11, 2009.

FTZ 202 was approved on July 14, 1994 (Board Order 693, 59 FR 37464, 7/22/94), expanded on August 26, 1996 (Board Order 842, 61 FR 46763, 9/5/96) and on July 9, 1999 (Board Order 1043, 64 FR 38887, 7/20/99), and expanded/reorganized on April 30, 2004 (Board Order 1331, 69 FR 26065, 5/11/04) and on April 24, 2009 (Board Order 1616, 74 FR 21623, 5/8/09).

The zone project currently consists of 16 permanent and temporary sites located at port facilities, industrial parks and warehouse facilities in Los Angeles, San Bernardino, Kern and Riverside Counties as described below:

- *Site 1* (2,783 acres total)—consists of the Port of Los Angeles Harbor Complex in San Pedro;
- *Site 2* (3 acres total) located: At 1 World Way within the Los Angeles International Airport (Parcel 1—1 acre); at 5330 W. 102nd Street, Los Angeles (Parcel 2—1.5 acres); and, at 1111 Watson Center Road, Unit 2–A, B–C, Carson (Parcel 3—22,705 sq. ft.);
- *Site 3* (564 acres)—within the International Trade & Technology Center, Santa Fe Highway at 7th Standard Road, Kern County;
- *Site 4* (353.6 acres)—within the 438-acre Carson Dominguez Technology Center south of the Artesia Freeway, between the Harbor Freeway and I–710 in the City of Carson and the Rancho Dominguez area of Los Angeles County;
- *Site 5* (8.51 acres total, sunset 4/30/2014)—warehouse facilities of 3Plus Logistics located at 20250 South Alameda Street in Rancho Dominguez (6.13 acres) and at 2730 El Presidio Street in Carson (2.38 acres);
- *Site 6* (23 acres)—located at 20002 E. Business Parkway, Walnut;
- *Site 7* (93 acres)—within the 140-acre Pacific Gateway Center, at the southwest corner of the San Diego Freeway Interchange, Los Angeles;
- *Site 9* (22.87 acres total): Parcel A (5.61 acres)—19700 Van Ness Avenue, Torrance; and, Parcel C (7.26 acres)—1451 Knox Street, Torrance;
- *Site 10* (325 acres)—Watson Industrial Center South, 22010 South Wilmington Avenue, Carson;
- *Site 11* (153.79 acres)—Watson Corporate Center located at 22010 South Wilmington Avenue and at 2417 East Carson Street in Carson;
- *Site 12* (8 acres, expires 7/31/2011)—Schafer Brothers Distribution Center, Inc., 1981 East 213th Street, Carson;
- *Site 14* (33 acres, expires 7/31/2011)—Nippon Express USA, Inc., located adjacent to Site 1, at 300 Westmont Street, San Pedro;
- *Site 15* (4 acres)—located at 1020 McFarland Avenue, Wilmington;
- *Site 20* (21 acres, expires 7/31/2011)—Kwikset Corporation facilities located within the Park Mira Loma West, southeast side of the Intersection of Highway 60 (the Pomona Freeway) and Interstate 15 (the Ontario Freeway), Mira Loma;
- *Site 23* (177 acres, sunset 3/31/2013)—within the 1,450-acre Tejon Industrial Complex located directly off Interstate 5 at the Highway 99 junction, Lebec; and,
- *Temporary Site 2* (2.4 acres, expires 6/30/2010)—a warehouse located at 2200 and 2250 Technology Place, Long Beach.

There is an application pending for a proposed new zone project in the Bakersfield, California, area (Doc. 18–2009). That application is requesting a transfer of FTZ 202—Site 23 (Tejon Industrial Complex) to the Bakersfield zone project as proposed Site 2.

The applicant is now requesting authority for a reorganization and expansion of the zone which would result in an overall net increase of zone sites and space. As described below, the proposal includes a request for new authority for expired sites/parcels, to delete an existing site, for permanent status for temporary sites, and to add a new site.

- Expand *Site 1* by requesting new authority for the Howard Hartry parcel (0.39 acres, 10,833 sq. ft.) (which expired on 7/1/09) (new total acreage—2,783 acres);
- Delete *Site 6* in its entirety due to changed circumstances;
- Expand *Site 9* by requesting new authority for Parcel B (7 acres) (which expired on 7/1/09) (new total acreage—29.87 acres);
- Modify *Site 12* by requesting permanent status;
- Modify and expand *Site 14* by requesting permanent status for the current 33 acres and requesting new authority for 55 acres (which expired on 7/1/09) (new total acreage—88 acres);
- Requesting new authority for 4.16 acres at *Site 16* (which had previously consisted of 153.20 acres that expired on 7/1/09);
- Requesting new authority for 18.5 acres at *Site 19* (which had previously consisted of 83.16 acres that expired on 7/1/09);
- Modify *Site 20* by requesting permanent status for the current 21 acres and to expand the site to include an additional 120.79 acres (113.37 acres that expired on 7/1/09 and a new 7.42-acre parcel) (new total acreage—141.79 acres);
- Requesting new authority for 84 acres at *Site 22* (which had previously consisted of 227 acres that expired on 7/1/09); and,
- Add *Proposed Site 24* (5 acres)—RPM Transport warehouse facility located at 2200 and 2250 Technology Place, Long Beach (this site will include Temporary Site 2 (2.4 acres) on a permanent basis and add an additional 2.6 acres).

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, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 16, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the

subsequent 15-day period to March 3, 2010.

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 Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: December 11, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–30196 Filed 12–17–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT22

Habitat Conservation Plan for the Santa Clara Valley Water District's Operations and Maintenance Activities in the Coyote Creek, Guadalupe River, and Stevens Creek Watersheds, Santa Clara County, California

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

ACTION: Revised notice of intent (NOI) to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), NMFS is issuing a revised notice to advise the public of our intent, in coordination with the Santa Clara Valley Water District (District), to conduct public scoping necessary to gather information to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The EIS/EIR will analyze the environmental effects of the proposed issuance of 50–year incidental take permits under the Federal Endangered Species Act of 1973, as amended, (ESA), for a Habitat Conservation Plan (HCP) within a portion of the Coyote Creek, Guadalupe River, and Stevens Creek watersheds (Three Creeks) and proposed modifications of the District's appropriative water rights by the State Water Resources Control Board (SWRCB) to settle litigation against the District concerning alleged impacts of its operations on fish, wildlife, water quality and other beneficial uses. The first NOI to prepare an EIS/EIR was published in the **Federal Register** on August 4, 2005, but since that time changes to the scope of the proposed action have occurred. NMFS provides this notice to (1) describe revisions to the proposed action; (2) describe Federal lead and cooperating agency roles; (3) update other Federal and State agencies and the public of the revised scope of the environmental review for this EIS/EIR; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR.

DATES: Written comments concerning the revised scope of the HCP and its associated environmental analysis should be received on or before January 19, 2010.

ADDRESSES: Send written comments to Gary Stern, San Francisco Bay Region Supervisor, National Marine Fisheries Service, Santa Rosa Area Office, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404, facsimile (707) 578–3435; or via e-mail to *ThreeCreeks.HCPSWR@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Gary Stern, National Marine Fisheries Service at the address shown above or at (707) 575–6060.

SUPPLEMENTARY INFORMATION:

Background

As the primary water management agency for Santa Clara County, California, the District has constructed and currently operates and maintains a system of local reservoirs, flood control channels, groundwater recharge facilities, and water conveyance facilities in the Santa Clara Valley, and serves an area of approximately 1,300 sq mi (3,367 sq km) with a population of 1.8 million. It acts as the county's water wholesaler and flood protection agency, serving as the steward for the streams and creeks, underground aquifers and District-built reservoirs within the County.

On July 11, 1996, a complaint was filed against the District alleging that its operations on the Three Creeks were adversely affecting fish and their habitat. In an effort to settle the complaint the District initiated the Fisheries and Aquatic Habitat Collaborative Effort (FAHCE). The FAHCE process culminated successfully in the Draft Settlement Agreement (DSA). In order to adopt and implement the DSA and pursue regulatory certainty of its existing and future water supplies, the District seeks an incidental take permit that would provide long-term assurances for the reliability of water supplies.

On August 4, 2005, the NMFS issued an NOI to prepare an EIS/EIR for the environmental effects of NMFS' issuance of an incidental take permit under the ESA to the District for the Three Creeks HCP. A public scoping meeting was held on August 9, 2005, in San Jose, California. Public and agency comments were received during the scoping meeting and written comments were received through September 15, 2005.

In 2005, activities covered by the proposed HCP were limited to on-going operations and maintenance of eight existing dams and reservoirs in the Guadalupe River, Coyote Creek, and Stevens Creek watershed. As described in the original NOI, the DSA is proposed to occur in three 10–year phases to achieve the overall goal of restoring and maintaining healthy steelhead and salmon populations as appropriate to each of the three watersheds. As set forth in more detail in the original NOI, DSA Phase 1 activities include, but are not limited to: (1) Re-operation of reservoirs in accordance with specified criteria for flood releases, fish passage, fish rearing, and other non-emergency operations and maintenance; (2) removal or remediation of Priority 1 District-owned barriers to fish passage and up to 50 percent cost sharing to remove or remediate Priority 1 barriers owned by others; (3) construction of fish habitat enhancement structures and other restoration actions in the three watersheds; (4) implementation actions to restore geomorphic functions as necessary for channel maintenance or formation in the three watersheds; and (5) development and adoption of general guidelines, applying environmentally sensitive techniques, to maintain or enhance geomorphic functions, riparian conditions and bank stabilization projects undertaken by other persons.

DSA Phase 2 activities include: (1) Extension of the distribution of suitable habitat for salmon and steelhead in Coyote Creek and Guadalupe River watersheds, as feasible; (2) relocation of the Coyote Percolation Facility to a site off-stream; (3) removal or remediation of Priority 2 barriers owned by the District; (4) use of recycled or other urban water to augment flows in Coyote Creek and Guadalupe River, as feasible; (5) implementation of a trap and truck operation to relocate adult steelhead above existing dams in the Three Creeks watersheds and to assist in smolt out-migration; (6) construction of a bypass channel or other modification necessary to isolate Alamitos Creek and Guadalupe River from Lake Almaden;

and (7) removal or modification of Almaden Reservoir to allow for unimpeded access of anadromous fish to upper watershed habitat. DSA Phase 3 activities include all those measures not implemented in Phase 2, but needed to achieve the overall management objectives.

Revisions to Project/Proposed Action

Since the DSA was developed in 2003, and the NOI was published on August 5, 2005, on-going evaluations of dam safety by the District, in coordination with the California Division of Safety of Dams (DSOD), have determined that (a) reservoir storage may need to be reduced to provide an appropriate margin of safety during anticipated earthquakes (b) major repairs could be needed at all reservoirs over the 50–year life of the HCP, and (c) safety retrofits would likely be required at one or more dams to ensure seismic stability of the dams and reservoirs. As a result of these evaluations, the District has proposed to expand the scope of Covered Activities in the HCP to include non-routine repair and maintenance activities at dams associated with dam and reservoir safety. Proposed Covered Activities have been revised to include the following additional activities in the Three Creeks HCP: (1) reservoir operations associated seismic safety evaluations and resulting interim storage restrictions developed by SCVWD and DSOD; (2) temporary dam operations during major maintenance and repair of District facilities that require dewatering of a reservoir; (3) routine and corrective dam and reservoir maintenance including on-going inspections, maintenance, repairs, and rehabilitation of dams and associated facilities; (4) dam safety retrofits that include upstream and/or downstream embankment strengthening (embankment and buttress methods); (5) the operation and maintenance of recharge facilities; and (6) conservation program measures that include a suite of habitat enhancement and restoration activities.

In addition to the expansion of Covered Activities, proposed Covered Species in the HCP has been expanded to 22 species (Covered Species), including 8 federally listed threatened or endangered species and 14 unlisted species that may become listed during the term of the permits. The 8 federally listed species are: the threatened Bay checkerspot butterfly (*Euphydryas editha bayensis*); threatened California red-legged frog (*Rana aurora draytonii*), threatened California tiger salamander (*Ambystoma californiense*); threatened central California coast steelhead (*Oncorhynchus mykiss*); endangered least Bell's vireo (*Vireo bellii pusillus*); endangered coyote ceanothus (*Ceanothus ferrisae*); endangered Santa Clara Valley dudleya (*Dudleya setchellii*); and endangered Metcalf Canyon jewelflower (*Caulanthus californicus*).The 14 unlisted species proposed for coverage are the foothill yellow-legged frog (*Rana boylii*); western pond turtle (*Clemmys (=Actinemys*) marmorata marmorata and *C. (=Actinemys) m. pallida*); Pacific lamprey (*Lampetra tridentata*); Central Valley fall-run Chinook salmon (*Oncorhynchus tshawytscha*); tricolored blackbird (*Agelaius tricolor*); fragrant fritillary (*Fritillaria liliacea*); most beautiful jewelflower (*Streptanthus alba ssp. peramoenus*); big scale balsamroot (*Balsamorhiza macrolepis var macrolepis*); Mount Hamilton thistle (*Cirsium fontinale var. campylon*); San Francisco collinsia (*Collinsia multicolor*); Loma Prieta hoita (*Hoita strobilina*); smooth lessengia (*Lessingia micradenia var. glabrata*); Hall's bush mallow (*Malacothamnus hallii*); and western leatherwood (*Dirca occidentalis*). Species may be added or deleted during the course of proposed HCP development based on further analysis, new information, agency consultation, and public comment. NMFS has authority to include listed Central California Coast steelhead and unlisted Central Valley fall-run Chinook salmon in the District's incidental take permit.

Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. To assist in determining whether this project would cause significant impacts that would result in the preparation of an EIS refer to 40 CFR 1508.27 or 40 CFR 1508.2. These sections provide information on how to determine whether effects are significant under NEPA and, therefore, would trigger the preparation of an EIS. Under NEPA, a reasonable range of alternatives to proposed projects is developed and considered in the NMFS environmental review. Alternatives considered for analysis in an environmental document may include: variations in the scope of covered activities; variations in the location, amount, and type of conservation; variations in permit duration; or, a combination of these elements. The EIS/EIR will consider the proposed action, the issuance of section 10(a)(1)(B) permits under the ESA, and several alternatives, representing varying levels of conservation, impacts from covered activities, the list of covered species, or a combination of these factors. Additionally, a No Action alternative will be included. Under the No Action alternative, NMFS would not issue Section 10(a)(1)(B) permits. In addition, the EIS/EIR will identify potentially significant direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomics, and other environmental resources that could occur with the implementation of the proposed actions and alternatives. A detailed description of the impacts of the proposed action and each alternative will be included in the EIS/EIR.

The primary purpose of the scoping process is for the public to assist the NMFS and the District in developing the EIS/EIR by identifying important issues and alternatives related to the proposed action. NMFS invites comments from all interested parties regarding the proposed expansion of Covered Activities and Covered Species. NMFS requests that comments be as specific as possible. In particular, we request information regarding: (1) The direct, indirect, and cumulative impacts that implementation of the proposed HCP with the expanded Covered Activities could have on endangered and threatened and other covered species, and their communities and habitats; (2) other possible alternatives that meet the purpose and need; potential adaptive management and/or monitoring provisions; (3) funding issues; (4) existing environmental conditions in the HCP area; (5) other plans or projects that might be relevant to this proposed project; and (6) minimization and mitigation efforts.

Comments will only be accepted in written form. You may submit written comments by mail, electronic mail to NMFS, facsimile transmission, or in person (see **ADDRESSES**). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time.

Dated: December 14, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–30184 Filed 12–17–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Jointly Owned Invention Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of jointly owned invention available for licensing.

SUMMARY: The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce, and the University of California, Berkeley, the Lawrence Berkeley National Laboratory, the University of Colorado, and Protiro. The Department of Commerce's interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 222, Room A242, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–2649, fax 301–975–3482, or e- mail: *nathalie.rioux@nist.gov.* Any request for information should include the NIST Docket number or Patent number and title for the invention as indicated below. The invention available for licensing is:

NIST Docket Number: 08–017

Title: Integrated Microchip Incorporating Atomic Magnetometers and Microfluidic Channels for Detection of NMR and MRI.

Abstract: A microfluidic chip incorporating an alkali vapor cell and microfluidic channel is described, which can be used to detect the nuclear magnetism of a polarized sample of nuclei in a fluid. Small magnetic fields in the vicinity of the vapor cell can be measured by optically polarizing and probing the spin precession in said small magnetic field. This can then be used to detect the magnetic field due to the sample of nuclei in the adjacent microfluidic channel. The nuclear magnetism in the microfluidic channel can be modulated by applying an appropriate series of radio or audio frequency pulses upstream from the microfluidic chip to yield a sensitive means of detecting nuclear magnetic resonance and magnetic resonance imaging.

Dated: December 9, 2009.

Patrick Gallagher,

Director.

[FR Doc. E9–30133 Filed 12–17–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will hold a conference call meeting on Tuesday, January 5, 2010, from 1 p.m. to 3 p.m. Eastern Standard Time (EST). The primary purpose of this meeting is to review the Committee's draft letter to the NIST Director on achieving national resilience. The draft letter will be posted on the NEHRP Web site at *http://nehrp.gov/*. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

DATES: The ACEHR will hold a conference call meeting on Tuesday, January 5, 2010, from 1 p.m. until 3 p.m. Eastern Standard Time (EST). The meeting will be open to the public. Interested parties may participate in the meeting from their remote location.

ADDRESSES: Questions regarding the meeting should be sent to National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8630, Gaithersburg, Maryland 20899–8630. For instructions on how to participate in the meeting, *please see* the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8630, Gaithersburg, Maryland 20899–8630. Dr. Hayes' e-mail address is *jack.hayes@nist.gov* and his phone number is (301) 975–5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108–360). The Committee is composed of 15 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex-officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- The effectiveness of NEHRP in performing its statutory activities (improved design and construction methods and practices; land use controls and redevelopment; prediction techniques and early-warning systems; coordinated emergency preparedness plans; and public education and involvement programs);
- Any need to revise NEHRP; and
- The management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at *http://nehrp.gov/.*

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app., notice is hereby given that the Advisory Committee on Earthquake Hazards Reduction (ACEHR) will hold a conference call meeting on Tuesday, January 5, 2010, from 1 p.m. until 3 p.m. Eastern Standard Time (EST). There will be no central meeting location. The public is invited to participate in the meeting by calling in from remote locations. The primary purpose of this meeting is to review the Committee's draft letter to the NIST Director on achieving national resilience. The draft letter will be posted on the NEHRP Web site at *http://nehrp.gov/.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request detailed instructions on how to dial in from a remote location to participate in the meeting. Approximately fifteen minutes will be reserved from 2:45 p.m.–3 p.m. Eastern Standard Time (EST) for public comments, and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those

who were unable to participate are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8630, Gaithersburg, Maryland 20899–8630, via fax at (301) 975–5433, or electronically by e-mail to *info@nehrp.gov.*

All participants of the meeting are required to pre-register to be admitted. Anyone wishing to participate must register by close of business Tuesday, December 29, 2009, in order to be admitted. Please submit your name, time of participation, e-mail address, and phone number to Tina Faecke. At the time of registration, participants will be provided with detailed instructions on how to dial in from a remote location in order to participate. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address with their registration. Tina Faecke's e-mail address is *tina.faecke@nist.gov,* and her phone number is (301) 975–5911.

Dated: December 11, 2009.

Patrick Gallagher,

Director.

[FR Doc. E9–30146 Filed 12–17–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Voluntary Product Standard PS 1–09, Structural Plywood

[Docket No.: 0911301418–91419–01]

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) is distributing for public comment a proposed revision of Voluntary Product Standard (PS) 1–07, Structural Plywood. The proposed revised standard, PS 1–09, Structural Plywood, was prepared by the Standing Committee for PS 1 and establishes requirements, for those who choose to adhere to the standard, for the principal types and grades of structural plywood and provides a basis for common understanding among producers, distributors, and users of the product. Interested parties are invited to review the proposed standard and submit comments to NIST.

DATES: Written comments regarding the proposed revision, PS 1–09, should be submitted to the Standards Services Division, NIST, no later than January 19, 2010.

ADDRESSES: An electronic copy (an Adobe Acrobat File) of the proposed standard, PS 1–09, can be obtained at the following Web site *http://ts.nist.gov/Standards/Conformity/vps.cfm.* This site also includes an electronic copy of PS 1–07 (the existing standard) and a summary of significant changes. Written comments on the proposed revision should be submitted to David F. Alderman, Standards Services Division, NIST, 100 Bureau Drive, Stop 2150, Gaithersburg, MD 20899–2150. Electronic comments may be submitted to *david.alderman@nist.gov.*

FOR FURTHER INFORMATION CONTACT: David F. Alderman, Standards Services Division, National Institute of Standards and Technology, telephone: (301) 975–4019; fax: 301–975–4715, e-mail: *david.alderman@nist.gov.*

SUPPLEMENTARY INFORMATION: Proposed Voluntary Product Standard PS 1–09 establishes requirements, for those who choose to adhere to the standard, for the principal types and grades of structural plywood. This standard covers the wood species, veneer grading, adhesive bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content, and packing of plywood intended for construction and industrial uses.

The proposed revision of the standard, PS 1–07, *Structural Plywood,* has been developed and is being processed in accordance with Department of Commerce provisions in Title 15 Code of Federal Regulations Part 10, *Procedures for the Development of Voluntary Product Standards,* as amended (published June 20, 1986). The Standing Committee for PS 1 is responsible for maintaining, revising, and interpreting the standard and comprises producers, distributors, users, and others with an interest in the standard.

After reviewing the standard, the Committee determined that updates were needed to reflect current industry practices. The Committee held meetings to review the standard and make needed changes.

Committee members voted on the revision and it was approved unanimously. The Committee submitted a report to NIST with the voting results and the draft revised standard. NIST has determined that the revised standard should be issued for public comment.

This revision includes the following changes:

1. *Panel thickness:* In order to resolve the inconsistency with NIST standards used by ''weights and measures'' regulators, PS 1 will require labeling with both a ''Performance Category'' which is a fractional label such as ''15/32'', in addition to a decimal thickness declaration, such as ''THICKNESS 0.438 IN''. The Performance Category will maintain consistency with the nominal panel thickness specifications required in the U.S. model codes. The decimal thickness declaration will assure that panels are compliant with weights and measures regulations.

2. Addition of non-mandatory appendices that provides guidance on NIST Handbook 130 ''Packaging and Labeling Regulations'' and on recommended thickness labeling.

3. Addition of non-mandatory appendices on attributes related to Green Building and Formaldehyde.

4. Clarification on sanding requirements.

5. Provisions for one-sided MDO and HDO plywood.

6. Revised definition of the moisture condition of ''dry'' panels.

7. Clarification on performance requirements.

All public comments will be reviewed and considered. The Standing Committee for PS 1 and NIST will revise the standard accordingly.

Dated: December 11, 2009.

Patrick Gallagher,

Director.

[FR Doc. E9–30135 Filed 12–17–09; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be provided by the nonprofit agency employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 1/11/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed action.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for the products and services will be required to procure the products and services listed below from the nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the products and services to the Government.
2. If approved, the action will result in authorizing small entities to provide the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List to be performed by the nonprofit agencies listed:

Products

8415–00–NSH–1746: Armored Survival Vest Ensemble (Small)
8465–00–NSH–2008: Set of Pockets (5 General, 1 Radio, 1 HABD)
8465–00–NSH–2007: HABD/SEA Pocket, Armored Survival Vest
8465–00–NSH–2006: Radio Pocket, Armored Survival Vest
8465–00–NSH–2005: General Pocket, Armored Survival Vest
8415–00–NSH–1783: Armored Survival Vest (Extra-Large)
8415–00–NSH–1782: Armored Survival Vest (Large)
8415–00–NSH–1781: Armored Survival Vest (Medium)
8415–00–NSH–1780: Armored Survival Vest (Small)
8415–00–NSH–1749: Armored Survival Vest Ensemble (Extra-Large)
8415–00–NSH–1748: Armored Survival Vest Ensemble (Large)
8415–00–NSH–1747: Armored Survival Vest (Medium)
NPA: Peckham Vocational Industries, Inc. Lansing, MI.
Contracting Activity: DEPT OF THE NAVY, Naval Air Systems CMD Headquarters, Patuxent River, MD.
Coverage: C-List for total of the requirements of DEPT OF THE NAVY, Naval Air Systems CMD Headquarters, Patuxent River, MD.

Services

Service Type/Location: Contract Management Support Service, DOD-wide.
NPA: National Industries for the Blind, Alexandria, VA.
Contracting Activity: Dept of the Army, Mission and Installation Contracting Command (MICC), Ft Knox, KY.
Service Type/Location: Custodial & Grounds Services, U.S. Army Headquarters 6th Recruiting Brigade, Las Vegas, NV, 4539 N. 5th Street, North Las Vegas, NV.
NPA: Opportunity Village Association for Retarded Citizens, Las Vegas, NV.
Contracting Activity: Dept of the Air Force, FA4861 99 CONS LGC, Nellis AFB, NV.
Service Type/Location: Custodial/Building Maintenance/Groundskeeping, San Angelo Air and Marine Unit, San Angelo, TX, 8092 Hangar Road, San Angelo, TX.
NPA: Mavagi Enterprises, Inc., San Antonio, TX.
Contracting Activity: Bureau of Customs and Border Protection, Department of Homeland Security, Office of Procurement, Washington, DC.
Service Type/Locations: Consolidated Facilities Maintenance (CFM)
Naval Medical Center Portsmouth, 620 John Paul Jones Circle Portsmouth, VA
Boone Clinic, Naval Amphibious Base Little Creek, 1035 Nider Blvd., Norfolk, VA
Yorktown Clinic, Naval Weapons Station, Yorktown, VA
Dam Neck Clinic, Fleet Combat Training Center Atlantic, 1885 Terrier Ave., Virginia Beach, VA
Oceana Clinic, Naval Air Station Oceana, 1550 Tomcat Blvd., Suite 150, Virginia Beach, VA
Sewells Point Clinic, Naval Station Norfolk, Norfolk, VA
NNSY Clinic, Norfolk Naval Shipyard, Portsmouth, VA.
NPA: Professional Contract Services, Inc., Austin, TX.
Contracting Activity: Dept of the Navy, Naval FAC Engineering CMD MID LANT, Norfolk, VA.
Service Type/Locations: Warehouse—Receiving & Distribution Services
Roybal Campus, 1600 Clifton Road, Atlanta, GA 30329
Century Center, Century Blvd., Atlanta, GA 30345
Chamblee, 4770 Buford Highway, Chamblee, GA 30341
Corporate Square, Corporate Square Boulevard, Atlanta, GA 30329
Executive Park, Executive Park Drive, Atlanta, GA 30329
Koger Center, Koger Office Park, Chamblee, GA 30341
Lawrenceville, 602 Webb Ginn House Road, Lawrenceville, GA 30245
Peachtree Distribution Center, 3719 N. Peachtree Road, Chamblee, GA 30341
Metro Logistics, 5630 Gwaltney Drive, Atlanta, GA 30336
Metro Logistics, 675 Hartman Road, SW., Suite 500, Austell, GA 30168.
NPA: Goodwill Industries of North Georgia, Atlanta, GA.
Contracting Activity: Centers for Disease Control & Prevention (CDC), Procurement and Grants Office (PGO), Atlanta, GA.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. E9–30121 Filed 12–17–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions Correction

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List. (Correction).

A correction is made to the **Federal Register** published by the Committee in proposing to add to the Procurement List products and services on December 18, 2009. The correct date that comments should be received is January 17, 2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. E9–30153 Filed 12–17–09; 8:45 am]

BILLING CODE 6353–01–P

COUNCIL ON ENVIRONMENTAL QUALITY

Interagency Ocean Policy Task Force—Interim Framework for Effective Coastal and Marine Spatial Planning

AGENCY: Council on Environmental Quality.

ACTION: Notice of Availability, Interagency Ocean Policy Task Force's ''Interim Framework for Effective Coastal and Marine Spatial Planning''.

SUMMARY: On June 12, 2009, the President established an Interagency Ocean Policy Task Force, led by the Chair of the Council on Environmental Quality. The Task Force was charged with, within 180 days, developing a recommended framework for effective coastal and marine spatial planning.

On December 9, 2009, the Task Force submitted its Interim Framework for Effective Coastal and Marine Spatial Planning (Interim Framework) to the President. To allow for additional public engagement and comment before the President makes any final decision on the Interim Framework, the Task Force endorsed issuing it for public review and comment.

DATES: Comments should be submitted on or before February 12, 2010.

ADDRESSES: The Task Force Interim Framework is available at *http://www.whitehouse.gov/oceans.* Comments on the Task Force Interim Framework should be submitted electronically to *http://www.whitehouse.gov/oceans* or in writing to The Council on Environmental Quality, Attn: Michael Weiss, 722 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Weiss, Deputy Associate Director for Ocean and Coastal Policy, at (202) 456–3892.

SUPPLEMENTARY INFORMATION: On June 12, 2009, President Obama issued a Memorandum to the Heads of Executive Departments and Agencies that established an Interagency Ocean Policy Task Force, led by the Chair of the Council on Environmental Quality. That Presidential memo charged the Task Force with, within 90 days, developing recommendations that include: (1) A national policy for the oceans, our coasts, and the Great Lakes; (2) a United States framework for policy coordination of efforts to improve stewardship of the oceans, our coasts, and the Great Lakes; and (3) an implementation strategy that identifies and prioritizes a set of objectives the United States should pursue to meet the objectives of a national policy. On September 17, 2009, the Task Force's Interim Report addressing these three items was issued for 30 days public comment. Comments were requested to be submitted by October 17, 2009.

The Task Force was also charged with, within 180 days, developing a recommended framework for effective coastal and marine spatial planning. The memorandum provides that the framework should be ''a comprehensive, integrated, ecosystem-based approach that addresses conservation, economic activity, user conflict, and sustainable use of ocean, coastal, and Great Lakes resources consistent with international law, including customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea.''

In response to this direction, the Task Force has completed its *Interim Framework for Effective Coastal and Marine Spatial Planning* (Interim Framework). The Interim Framework proposes a new, integrated approach to better determine how the ocean, coasts, and Great Lakes are sustainably used and protected now and for future generations. It offers a foundation for coastal and marine spatial planning in the United States, and describes a flexible path forward for the regional development and implementation of comprehensive and ecosystem-based coastal and marine spatial plans. The Interim Report is now available at the Council on Environmental Quality Web site at *http://www.whitehouse.gov/oceans.*

Public comments are requested on or before February 12, 2010.

Dated: December 14, 2009.

Nancy H. Sutley,

Chair, Council on Environmental Quality.

[FR Doc. E9–30071 Filed 12–17–09; 8:45 am]

BILLING CODE 3125–W0–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–HA–0167]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by January 19, 2010.

Title and OMB Number: Certification of Non-contributory TRICARE Supplemental Insurance Plan; OMB Control Number 0720–TBD.

Type of Request: New.

Number of Respondents: 1,500.

Responses per Respondent: 1.

Annual Responses: 1,500.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 250 hours.

Needs and Uses: Section 707 of the John Warner National Defense Authorization Act for Fiscal Year 2007 added section 1097c to Title 10. Section 1097c prohibits employers from offering financial or other incentives to certain TRICARE-eligible employees to not enroll in an employer-offered group-health plan. In other words, employers may no longer offer TRICARE supplemental insurance plans as part of an employee benefit package. Employers may, however, offer TRICARE supplemental insurance plans as part of an employee benefit package provided the plan is not paid for in whole or in part by the employer and is not endorsed by the employer. When such TRICARE supplemental plans are offered, the employer must properly document that they did not provide any payment for the benefit nor receive any direct or indirect consideration or compensation for offering the benefit; the employer's only involvement is providing the administrative support. That certification will be provided upon request to the Department of Defense.

Affected Public: Business or other for profit; Not-for-profit institutions.

Frequency: On occasion.

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

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any

personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: December 4, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–30088 Filed 12–17–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of an Extension of a TRICARE Demonstration Project for the State of Alaska

AGENCY: Office of the Secretary of Defense (Health Affairs)/TRICARE Management Activity, Department of Defense.

ACTION: Notice of extension of demonstration project.

SUMMARY: This notice advises interested parties of the extension of a Military Health System (MHS) demonstration project entitled ''TRICARE Demonstration Project for the State of Alaska.'' The original demonstration notice was published on May 18, 2004 (69 FR 28124–28125), and described a demonstration project to exempt the underwriting provisions for the cost of civilian health care in the State of Alaska from the TRICARE managed care support contract for the Western Region. The demonstration was to be conducted for up to 5 years after the start of health care delivery under the contract and therefore, was scheduled to end on March 31, 2009. On February 23, 2009, a notice was published in the **Federal Register** (74 FR 8068–8069) to extend the demonstration for 1 additional year. As the rulemaking process has not yet been completed, the demonstration project will now be extended for 1 additional year (March 31, 2011).

There is no cost impact that is caused by this extension.

DATES: *Effective Date:* The extension of the demonstration will be effective April 1, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O'Bar, Office of the Assistant Secretary of Defense (Health Affairs)—TRICARE Management Activity, TRICARE Policy and Operations Directorate, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041–3206; telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

A. Background

For additional information on the TRICARE Demonstration Project for the State of Alaska, please see 74 FR 8068–8069. The demonstration notice focused on the unique situation involved in the delivery of health care services in the State of Alaska, which cannot be addressed fully by applying all of the at-risk standards that apply to the TRICARE managed care support contracts under which services are provided in the other 49 States without some modification. Under the extended demonstration, the current Western Region managed care support contractor will continue to be exempt from the underwriting provisions for the cost of civilian health care in the State of Alaska. The contractor shall provide all the services required for Alaska as specified in the TRICARE Operations Manual, Chapter 23, but will not be responsible for the underwriting fee associated with providing those services under that chapter. All other provisions contained in the TRICARE managed care support contract, TRICARE Operations Manual (6010.51–M), TRICARE Policy Manual 6010.54–M), TRICARE Systems Manual (7950.1–M), and TRICARE Reimbursement Manual (6010.55–M), shall apply in Alaska.

B. Description of Extension of Demonstration Project

The demonstration project will now be extended for 1 additional year (March 31, 2011).

Dated: December 15, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–30089 Filed 12–17–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Extension of Provider Reimbursement Demonstration Project for the State of Alaska

AGENCY: Department of Defense (DoD).

ACTION: Notice of demonstration extension.

SUMMARY: This notice provides an extension of the demonstration project in the State of Alaska for individual provider payment rates. Under the demonstration, payment rates for physicians and other non-institutional individual professional providers in the State of Alaska have been set at a rate higher than the Medicare rate. Further, the enhanced portion of the State of Alaska demonstration that provides for reimbursement of 101 percent of reasonable costs for inpatient and outpatient facilities of Critical Access Hospitals (CAHs) is terminated because it is no longer necessary based on publication of the TRICARE Reimbursement of CAHs final rule (74 FR 44752) on August 31, 2009.

DATES: The portion of the demonstration regarding payment rates for physicians and other non-institutional providers is extended through December 31, 2010. The CAH portion of the demonstration shall end on November 30, 2009.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Glenn J. Corn, TRICARE Management Activity, Medical Benefits and Reimbursement Branch, telephone (303) 676–3566.

SUPPLEMENTARY INFORMATION: On November 20, 2006, DoD published a Notice of a TRICARE demonstration project for the State of Alaska, with an effective date of January 1, 2007 (71 FR 67113), to set payment rates for physicians and other non-institutional individual professional providers in the State of Alaska at a rate higher than the Medicare rate. The demonstration was effective January 1, 2007, for a period of three years, ending on December 31, 2009. Since that time, DoD has determined that increasing provider payment rates (factor rate increase) in Alaska, across all services, has shown mixed results on provider participation, beneficiary access to care, cost of health care services, military readiness, and morale and welfare. The Agency feels an extension of the demonstration is needed to provide more time to fully evaluate and implement a comprehensive framework for managing TRICARE in the State of Alaska. In the meantime, the Agency is looking toward developing a more comprehensive, updated management and reimbursement strategy that will provide a foundation for developing and implementing a comprehensive long-term plan through collaboration with Federal Service Partners for mutually accepted Federal rates. The demonstration continues to be conducted under statutory authority provided in 10 United States Code 1092.

Subsequent to the publication of the initial notice creating the increased rates

for individual providers, DoD published a second notice on July 20, 2007, expanding the TRICARE demonstration project for the State of Alaska to reimburse CAHs 101 percent of reasonable costs for inpatient and outpatient care with an effective date of July 1, 2007 (72 FR 41501), using a method similar to Medicare's payment for these hospitals. The CAH portion of the State of Alaska demonstration is no longer necessary because the DoD is implementing such a reimbursement system on a nationwide basis. Consequently, the CAH portion of the demonstration is terminated. The TRICARE CAH final rule was published on August 31, 2009 (74 FR 44752).

Dated: December 15, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–30090 Filed 12–17–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Extension of the Public Comment Period for the Draft Environmental Impact Statement for the Moffat Collection System Project, City and County of Denver, Adams County, Boulder County, Jefferson County, and Grand County, CO

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Omaha District is announcing a 32-day extension of the public comment period for the Moffat Collection System Project (Moffat Project) Draft Environmental Impact Statement (Draft EIS). The originally announced comment period ends on January 28, 2010, but has been extended until March 1, 2010. The original Notice of Availability of the Draft EIS was published in the **Federal Register** on Friday, October 30, 2009 (74 FR 56186).

DATES: Comments on the Draft EIS should be postmarked no later than March 1, 2010.

ADDRESSES: Written comments on the Draft EIS should be sent to the attention of: Scott Franklin, Moffat EIS Project Manager, U.S. Army Corps of Engineers, Omaha District—Denver Regulatory Office, 9307 South Wadsworth Boulevard, Littleton, CO 80128; via Fax at 303–979–0602; or via e-mail at *moffat.eis@usace.army.mil.*

SUPPLEMENTARY INFORMATION: None.

Timothy T. Carey,

Chief, Denver Regulatory Office.

[FR Doc. E9–30119 Filed 12–17–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

The Release of the Final Environmental Impact Statement (FEIS) for the Proposed Construction of the Western Wake Regional Wastewater Management Facilities, Which Includes Regional Wastewater Pumping, Conveyance, Treatment, and Discharge Facilities To Serve the Towns of Apex, Cary, Holly Springs and Morrisville, as Well as the Wake County Portion of Research Triangle Park (RTP South) in North Carolina

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Regulatory Division has been reviewing the request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act from the Town of Cary, acting as the lead applicant for the Western Wake Regional Wastewater Management Facilities Project Partners (Western Wake Partners), to construct Regional Wastewater Management Facility. The proposed project consists of regional wastewater pumping, conveyance, treatment, and discharge facilities to serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as the Wake County portion of Research Triangle Park (RTP South), NC.

The project is being proposed by the Western Wake Partners to provide wastewater service for planned growth and development in the project service area and to comply with two regulatory mandates. One regulatory mandate has been issued by the North Carolina Environmental Management Commission (EMC), and the second regulatory mandate has been issued by the North Carolina Department of Environment and Natural Resources (NC DENR).

DATES: Written comments on the Final EIS will be received until January 19, 2010.

ADDRESSES: Copies of comments and questions regarding the Final EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number 2005–20159, 69 Darlington Avenue, Wilmington, NC 28403. Copies of the Final EIS can be reviewed on the Wilmington District Regulatory homepage at, *http://www.saw.usace.army.mil/wetlands/projects/ww-wtp,* or contact Ms. Gwen Robinson, at (910) 251–4494, to receive written or CD copies of the Final EIS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Final EIS can be directed to Mr. Henry Wicker, Project Manager, Regulatory Division, telephone: (910) 251–4930.

SUPPLEMENTARY INFORMATION:

1. *Project Description.* The proposed project consists of regional wastewater pumping, conveyance, treatment, and discharge facilities to serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as RTP South. The purpose of the project is to provide wastewater service for planned growth and development in the project service area and to comply with two regulatory mandates. One regulatory mandate has been issued by the North Carolina Environmental Management Commission (EMC), and the second regulatory mandate has been issued by the North Carolina Department of Environment and Natural Resources (NC DENR). Regulatory Mandate No. 1—Interbasin Transfer: The Towns of Apex, Cary, and Morrisville, as well as RTP South, obtain their drinking water from Jordan Lake in the Cape Fear River Basin and discharge treated effluent to locations in the Neuse River Basin. Obtaining water from one basin and discharging it to another river basin is referred to as an interbasin transfer (IBT), which requires a permit from the EMC. In July 2001, the EMC granted the Towns of Apex, Cary, and Morrisville, as well as Wake County (on behalf of RTP South), an IBT certificate to withdraw water from the Cape Fear River Basin and transfer the water to the Neuse River Basin. However, as a condition of approval, the IBT certificate issued by the EMC requires the local governments to return reclaimed water to the Cape Fear River Basin after 2010. As a result, the local governments have initiated activities to plan, permit, design, and construct wastewater transmission, treatment, and disposal facilities in order to comply with the terms and conditions of the IBT certificate issued by the EMC. The facilities that are described and evaluated in the environmental impact statement (FEIS) are needed to comply with the IBT certificate terms and conditions.

Regulatory Mandate No. 2—Nutrient Enrichment for Harris Lake: The Town of Holly Springs currently has a wastewater treatment plant (WWTP) that discharges to Utley Creek, which is a tributary to Harris Lake in the Cape Fear River Basin. Representatives from NCDENR have directed the Town of Holly Springs to remove the Town's wastewater discharge from Utley Creek due to nutrient enrichment issues in Utley Creek and downstream in Harris Lake. In addition, NCDENR has encouraged Holly Springs to participate with Apex, Cary and Morrisville on a regional wastewater management program that will allow Holly Springs to remove the Town's discharge from Utley Creek after 2010. Thus, Holly Springs is participating with Apex, Cary and Morrisville in the planning, permitting, design and construction of regional effluent disposal facilities in order to comply with the mandate issued by NCDENR to remove its discharge from Utley Creek. The regional effluent disposal facilities that will be described and evaluated in the FEIS are needed to comply with the NCDENR mandate.

The proposed project was reviewed to address a number of issues which includes an alternatives analyses, direct environmental impacts, secondary and cumulative environmental impacts, environmental justice concerns, endangered species, and potential project costs.

2. *Proposed Action.* The proposed action is to construct a regional wastewater pumping, conveyance, treatment, and discharge facility to serve the Towns of Apex, Cary, Holly Springs and Morrisville, as well as RTP South in North Carolina. The Towns have cooperated together to develop the proposal, and each town will be responsible for the permits for their part of the proposed project. It is anticipated there will be 4 permit requests to construct the whole project. Future requests for Department of the Army authorization for other sections of the project will be submitted once the final plans have been completed.

This request for Department of the Army authorization consists of the construction of a regional wastewater system that includes the construction of influent conveyance facilities, a new water reclamation facility (WRF), and new effluent conveyance facilities in western Wake County and Chatham County, North Carolina to serve the Towns of Apex, Cary, and Morrisville and RTP South. The proposed WRF site is north of US 1 and just south of Old US 1 between New Hill-Holleman and Shearon Harris Roads. The WRF would be constructed in two phases to a proposed treatment capacity of 30-million gallons per day (mgd). The Town of Holly Springs Utley Creek Wastewater Treatment Plant (WWTP) has already been approved to expand to 6 MGD and will share the 38 MGD outfall to the Cape Fear River. The effluent line will leave the WRF in Wake County and enter Chatham County to the discharge point located on the Cape Fear River downstream of Buckhorn Dam in Chatham County.

As a result of the construction activities related to this permit request from Western Wake Partners, there will be temporary and permanent impacts to wetlands and streams. The total permanent impact of the proposed project is 509 of linear feet (lf) of stream (329 lf of perennial and 180 lf intermittent) and 1.8 acres of wetlands. The total temporary impact of the proposed project is 1,924 lf of stream (1,115 lf of perennial and 809 lf of intermittent) and 6.8 acres of wetlands. Most of these impacts are along the influent transmission lines.

4. *Alternatives.* An extensive alternatives analysis was performed and reviewed by the Project Delivery Team (PDT). This included the evaluation of wastewater management options; wastewater discharge options; WRF site alternatives; conveyance alternatives and wastewater outfall options. Many alternatives were identified and evaluated through the scoping process, and further detailed description of all alternatives is disclosed in Section 2 of the FEIS.

5. *Scoping Process.* A public scoping meeting was held on April 19, 2007 and a Project Delivery Team (PDT) was developed to provide input in the preparation of the EIS. The PDT was comprised of representatives from local, state, and federal government agencies, the Western Wake Partners, Wake County, Chatham County, and the New Hill Community.

The Draft EIS was released for public comment from March 13, 2009 to April 27, 2009. Also, a Public Hearing was held at the City of Apex Town Hall, North Carolina, on April 14, 2009 for public input on the proposed project and Draft EIS. The comments from the public hearing and written comments on the Draft EIS were incorporated into the FEIS. During this process, the COE coordinated closely with the North Carolina Division of Water Quality Construction Grants and Loans Section in the development of the EIS to ensure the process complies with State Environmental Policy Act (SEPA) requirements, as well as the NEPA requirements. The FEIS has been designed to consolidate both NEPA and SEPA processes to eliminate duplications.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E9–30120 Filed 12–17–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Sub Pay Pools (SPPs)/Performance Review Boards (PRBs). The purpose of the SPP/PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance bonuses and basic pay increases. Composition of the specific SPP/PRBs will be determined on an ad hoc basis from among individuals listed below:

ADAMS, P. C. MS.; ALLARD, T. DR; ARCHITZEL, D. RADM; ARNY, L. W. MR.; BALDERSON, D. MS.; BALDERSON, W. M. MR.; BARBER, A. H. MR.; BARNUM, H. C. MR.; BAUMAN, D. M. MR.; BELAND, R. W. DR.; BENEDICT, T. J. RDML; BETRO, T. A. MR.; BILLINGSLEA, M. MR.; BLAIR, A. K. MS.; BLINCOE, R. J. MR.; BOURBEAU, S. J. MS.; BOZIN, S. D. RADM; BRADY, P. H. RDML; BRANCH, E. B. MR.; BRAY, W. P. MR.; BRENNAN, A. M. MS.; BROOK, D. DR; BROTHERTON, A. E. MS.; BROWN, M. RDML; BROWN, W. A. RDML; CALI, R. T. MR.; CAMPBELL, J. F. RADM; CAREY, R. J. MR.; CARLIN, R. T. DR.; CARR, N. RDML; CASTELLAW, J. LTGEN; COHN, H. A. MR.; COLEMAN, R. LTGEN; COOK, C. E. MR.; COOLEY, K. MR.; COVELL, C. RDML; COX, A. D. MR.; CREEDON, C. MR.; CWALINA, B. B. MR.; DAVENPORT, D. RADM; DAVIS, A. R. MS.; DAVIS, L. C. DR.; DEBBINK, D. VADM; DECKER, J. MS.; DECKER, M. H. MR.; DEITCHMAN, M. MR.; DELIGNE, W. J. MR.; DEUTSCH, K. RADM; DILLON, B. MR.; DRISKO, M. MS.; DUNAWAY, D. RDML; DUNN, S. C. MR.; EASTBURG, S. RDML; ECCLES, T. RDML; EHRLER, S. M. MR.; ELLIS,

W. G. MR.; ENEWOLD, G. RADM; ESSIG, P. CAPT; ETTER, D. M., THE HONORABLE; EVANS, G. L. MS.; and

EVANS, I. E. MS.; EVANS, J. J. MR.; EXLEY, R. L. MR.; FERGUSON, J. F. MR.; FERGUSON, M. VADM; FERKO, J. G. MR.; FISCHER, J. W. DR.; FITZGERALD, M. VADM; FLYNN, T. V. RDML; FRANKFURT, T. MR.; FRANTZ, G. T. MR.; FRICK, M. S. RDML; GAHAGAN, D. CAPT.; GALGANO, M. MR.; GALLOWAY, J. MR.; GARCIA, J. G. MR.; GAVIN, V. S. MR.; GIBBS, R. C. MR.; GLAS, R. MR.; GODDARD, C. H. RDML; GONZALEZ, A. H. MR.; GOODHART, J. C. MR.; GORDON, F. E. DR.; GRIFFES, M. D. MR.; GRIFFIN, R. MR.; GROSKLAGS, P. RDML; GUARD, H. MR.; HAMILTON, C. RADM; HANEY, C. RADM; HANNAH, B. W. DR.; HARNED, N. MS.; HARRELL, M. MS.; HARVEY, J. C. VADM; HAYNES, R. S. MR.; HEELY, T. RADM; HERR, F. DR.; HILARIDES, W. H. RDML; HOGUE, R. D. MR.; HOLLOWAY, D. RADM; HONECKER, M. W. MR.; HOWARD, J. S. MR.; ISELIN, S. MR.; JAGGARD, M. F. MR.; JAMES, J. H. MR.; JIMENEZ, F., THE HONORABLE; JOHNSON, J. L. MR.; JOHNSON, S. RADM; JONES, W. DR; JUNKER, B. R. DR.; KARLE, I. DR.; KASKIN, J. D. MR.; KAY, W. MS.; KEEN, S. L. MS.; KEENEY, C. MS.; KISTLER, M. R. MR.; KLEINTOP, M. U. MS.; KRAMLICH, R. S. LTGEN; KRASIK, S. A. MS.; KRUM, R. A. MR.; KUNESH, N. J. MR.; and

LAKE, R. BGEN; LANDAU, S. P. MR.; LANDAY, W. E. RADM; LAUX, T. E. MR.; LAWRENCE, J. P. DR.; LEACH, R. A. MR.; LEDVINA, T. N. MR.; LEFEBVRE, P. MR.; LEGGIERI, S. R. MS.; LEIKACH, K. MR.; LOCKLEAR, S. J. VADM; LOFTUS, J. V. MS.; LONG, L. MS.; LUCCHINO, C. MS.; LUNDBERG, D. A. MR.; LUNNEY, J. E. MR.; LUTTERLOH, S. MR.; MAGLICH, M. F. MR.; MAGNUS, R. LTGEN; MAGUIRE, M. M. MS.; MARSHALL, J. B. MR.; MASCIARELLI, J. R. MR.; MCCARTHY, E. MS.; MCCARTHY, J. MR.; MCCORMACK, JR., D. F. MR.; MCCOY, K. M. RDML; MCCURDY, J. MR.; MCGRATH, M. F. MR.; MCLAUGHLIN, P. M. MR.; MCMAHON, M. RDML; MCMANAMON, J. P. RDML; MCNAIR, J. W. MR.; MEADOWS, L. J. MS.; MEEKS JR., A. W. DR.; MENG, J. C. DR; MILLER, C. A. MR.; MITCHELL, S. E. MR.; MOLZAHN, W. R. MR.; MONTGOMERY, J. A. DR.; MURRAY, S. MS.; MUTH, C. C. MS.; NAVAS JR., W. A., THE HONORABLE; NYALKO, L. J. MS.; O'NEIL, S. M. MR.; PAOLETTI, C. MR.; PENN, B. J., THE HONORABLE; PERSONS, B. J. MR.; PIC, J. E. MR.; PIVIROTTO, R. R. MR.; PLUNKETT, B. J. MR.; PUNDERSON, J. F. MR.; RAPS, S. P. MS.; REEVES, C. R. MR.; REIST, J. BGEN; ROBERTS, T. MS.; RODRIGUEZ, RDML; ROLLOW, T. A. MR.; ROSENTHAL, R. J. MR.; RYZEWIC, W. H. MR.; SANDEL, E. A. MS.; SANDERS, D. K. MR.; and

SCHAEFER, J. C. MR.; SCHREGARDUS, D. R. MR.; SCHUETTE, L. DR; SCOVEL, G. A. MR.; SEE, V. RDML; SHANNON, W. RDML; SHARP, B. A. MR.; SHEPHARD, M. R. MS.; SIEL JR., C. R. MR.; SKINNER, W. RDML; SMERCHANSKY, J. H. MR.; SMITH, R. F. MR.; SMITH, R. M. MR.; SOLHAN, G. W. MR.; SOMOROFF, A. R. DR.; SORENSON, D. CAPT; SPANN, L. H. MR.; STACKLEY, S. MR.; STEFFEE, D. P. MR.; STEWART, P. CAPT; STEWART, V. R. BGEN; STILLER, A. F. MS.; SUMMERALL, W. MR.; TAMBURRINO, P. M. MR.; TESCH, T. G. MR.; THACKRAH, J. MR.; THOMSEN, J. E.; TIMME, W. G. RDML; TOWNSEND, D. K. MS.; VOETSCH, S. S. RDML; WALLS, V. J. MR.; WARD, J. D. MR.; WEDDEL, D. W. MR.; WEYMAN, A. S. MR.; WHITTEMORE, A. MS.; WHITTMANN, J. MR.; WIERINGA, J. A. RDML; WILLIAMS, W. LTGEN; and WOOD, B. H. MR.

FOR FURTHER INFORMATION CONTACT: Ms. LaToya Bedgood, Office of Civilian Human Resources, telephone 202–685–6659.

Dated: December 11, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–30204 Filed 12–17–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Indian Education—Professional Development Grants

Notice inviting applications for new awards for fiscal year (FY) 2010.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299B.

Dates: Applications Available: December 18, 2009.

Deadline for Transmittal of Applications: February 25, 2010.

Deadline for Intergovernmental Review: April 26, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Professional Development program are: (1) To increase the number of qualified Indian individuals in professions that serve Indians; (2) to provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (3) to improve the skills of qualified Indian individuals who serve in the education field. Activities may include, but are not limited to, continuing education programs, symposia, workshops, conferences, and direct financial support.

Priorities: This competition contains two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), the absolute priorities are from the regulations for this program (34 CFR 263.5(c)). In accordance with 34 CFR 75.105(b)(2)(ii) and (iv), the competitive preference priorities are from the regulations for this program (34 CFR 263.5(a) and (b)).

Absolute Priorities: For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of the following priorities.

These priorities are:

Absolute Priority One—Pre-Service Training for Teachers:

A project that provides support and training to Indian individuals in completing a pre-service education program that enables these individuals to meet the requirements for full State certification or licensure as a teacher through—

(i) (A) Training that leads to a bachelor's degree in education before the end of the award period; or

(B) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area so long as the training meets the requirements for full State teacher certification or licensure; or

(C) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(ii) One-year induction services after graduation, certification, or licensure, provided during the award period to graduates of the pre-service program while they are completing their first year of work in local educational agencies (LEAs) with significant American Indian and Alaska Native student populations.

Note: In working with various institutions of higher education and State certification and licensure requirements, we have found that States requiring a degree in a specific subject area (*e.g.,* specialty areas or teaching at the secondary level) generally require a master's degree or completion of a five-year program before an individual can be certified or licensed as a teacher. Students pursuing those credentials would be eligible to

participate so long as their training meets the requirements for full State certification or licensure as a teacher.

Note: We clarify that, to meet the requirements of this priority, the degree received as a result of training and the one year of induction services are to be completed prior to the end of the award period.

Absolute Priority Two—Pre-Service Administrator Training:

A project that provides—

(1) Support and training to Indian individuals to complete a master's degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator; and

(2) One year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as administrators in schools with a significant American Indian and Alaska Native student population.

Note: We clarify that, to meet the requirements of this priority, the degree received as a result of training and the one year of induction services are to be completed prior to the end of the award period.

Competitive Preference Priorities: For FY 2010, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets one or both of these priorities.

These priorities are:

Competitive Preference Priority One:

We award five points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of the Education Department General Administrative Regulations (EDGAR) and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five competitive preference points. The consortium agreement, signed by all parties, must be submitted with the application in order for the application to be considered a consortium application.

Competitive Preference Priority Two:

We award five points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agent for the application. The consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be eligible to receive the five competitive preference points. These points are in addition to the five competitive preference points that may be awarded under Competitive Preference Priority One. The consortium agreement, signed by all parties, must be submitted with the application in order for the application to be considered a consortium application.

Program Authority: 20 U.S.C. 7442.

Applicable Regulations: (a) EDGAR in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 263.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $3,000,000 for new awards for this program for FY 2010. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $125,000–$400,000.

Estimated Average Size of Awards: $333,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for the first, second, or third 12-month budget periods. The last 12-month budget period of a 48-month award will be limited to induction services only, at a cost not to exceed $90,000. The Assistant Secretary for Elementary and Secondary Education may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 9.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are institutions of higher education, including Indian institutions of higher education; State educational agencies (SEAs) or local educational agencies (LEAs) in consortium with an institution of higher education; Indian tribes or organizations in consortium with an institution of higher education; and Department of the Interior/Bureau of Indian Education-funded schools in consortium with an institution of higher education. LEAs include charter schools that are considered LEAs under State law.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must submit a consortium agreement, signed by all parties, with the application. Letters of support do *not* meet the requirement for a consortium agreement.

In order to be considered an eligible entity, applicants, including institutions of higher education, must be eligible to provide the level and type of degree proposed in the application or must apply in a consortium with an institution of higher education that is eligible to grant the target degree.

Applicants applying in consortium with or as an ''Indian organization'' must demonstrate eligibility by showing how the ''Indian organization'' meets all requirements of the definition in 34 CFR 263.3.

The term ''Indian institution of higher education'' means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College), authorized in the Navajo Community College Assistance Act of 1978 (25 U.S.C. 640a *et seq.*).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* Projects funded under this competition are encouraged to budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period. In addition, the Department strongly encourages grantees to begin to provide training by January 2011.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://*

www.ed.gov/fund/grant/apply/grantapps/index.html.

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, 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 from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.299B.

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 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 program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 35 pages, using the following standards:

- A page is 8.5'' × 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, table of contents, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section.

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: December 18, 2009.

Deadline for Transmittal of Applications: February 25, 2009.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* 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: April 19, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Under 34 CFR 263.4, a project funded under this program may include, as training costs, assistance to either fully finance a student's educational expenses or supplement other financial aid for meeting a student's educational expenses. For the payment of stipends to project participants receiving training, the Secretary expects to set the stipend maximum at $1,800 per month for full-time students and provide for a $300 allowance per month per dependent during an academic term. The terms ''stipend,'' ''full-time student,'' and ''dependent allowance'' are defined in 34 CFR 263.3. Stipends may be paid only to full-time students.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Professional Development Program—CFDA Number 84.299B must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

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:

- 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 qualify for an exception to the electronic submission requirement, as described

elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: 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 e-Application 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.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E231, Washington, DC 20202. FAX: (202) 260–7779.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.299B)
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 qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.299B)
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

Selection Criteria: The selection criteria for this competition are from 34 CFR 263.6 and are listed in the application package.

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:* The Secretary has established the following key performance measures for assessing the effectiveness of the Professional Development program: (1) The percentage of participants in administrator preparation projects who become principals, vice principals, or other school administrators in LEAs that enroll five percent or more American Indian and Alaska Native students; (2) the percentage of participants in teacher preparation projects who become teachers in LEAs that enroll five percent or more American Indian and Alaska Native students; (3) the percentage of program participants who meet the definition of ''Highly Qualified'' in section 9101(23) of the ESEA; (4) the percentage of program participants who complete their service requirement on schedule; (5) the cost per individual who successfully completes an administrator preparation program, takes a position in an LEA with a significant American Indian and Alaska Native student population, and completes the service requirement in that LEA; and (6) the cost per individual who successfully completes a teacher preparation program, takes a position in an LEA with a significant American Indian and Alaska Native student population, and completes the service requirement in that LEA.

We encourage applicants to demonstrate a strong capacity to provide reliable data on these measures in their responses to the selection criteria ''Quality of project services'' and ''Quality of the project evaluation.''

All grantees will be expected to submit, as part of their performance report, information with respect to these performance measures.

VII. Agency Contact

For further information contact: Lana Shaughnessy, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E231, Washington, DC 20202–6335. Telephone: (202) 205–2528 mail to: or by e-mail: *Lana.Shaughnessy@ed.gov.*

If you use a TDD, call the Federal Relay Service, 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) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**.

Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated:December 15, 2009.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. E9–30201 Filed 12–17–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Individual-Level Characteristics Related to Employment Among Individuals With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–1.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a funding priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes a priority for an RRTC. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before January 19, 2010.

ADDRESSES: Address all comments about this notice to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *donna.nangle@ed.gov.* You must include the term ''Proposed Priority for an RRTC on Individual-Level Characteristics Related to Employment Among Individuals with Disabilities'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for RRTC competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to clearly identify the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 6029, 550 12th Street, SW., PCP, Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC, time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General Rehabilitation Research and Training Centers (RRTC) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (72 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must also demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority

This notice contains one proposed priority.

Individual-Level Characteristics Related to Employment Among Individuals with Disabilities

Background: Individuals with disabilities experience lower rates of employment than those without disabilities, and the disparity in employment rates is seen across all sociodemographic groups (Steinmetz, 2006; U.S. Census Bureau, 2006; U.S. Department of Labor, 2009). This disparity in employment outcomes also extends to other aspects of employment, such as monthly earnings and hourly wages (Ozawa & Yeo, 2006).

Individuals with disabilities are a heterogeneous group and employment-related outcomes for people with disabilities appear to be associated with individual-level characteristics, such as severity of disability and sociodemographic characteristics (Crisp, 2005; Ozawa & Yeo, 2006). Many studies of individual-level characteristics and employment-related outcomes of individuals with disabilities have been based on samples of individuals with a specific disabling condition such as spinal cord injury, making it difficult to generalize findings across disability types (Krause, 2003; Krause & Terza, 2006; Phillips & Stuifbergen, 2006; Walker *et al.,* 2006). In the few studies that have used samples of individuals with a variety of disabilities, disparities in employment outcomes across subpopulations of individuals with disabilities appear to be defined by the characteristics of the individual's disability or sociodemographic group. For example, the likelihood of poor employment outcomes tends to increase with severity of disability (Crisp, 2005; Meade *et al.,* 2004; Ozawa & Yeo, 2006; Phillips & Stuifbergen, 2006; Walker *et al.,* 2006). In addition, poorer employment outcomes are associated with being a member of a minority race or ethnic group or being less well educated (Crisp, 2005; Krause & Terza, 2006; Ozawa & Yeo, 2006; Randolph & Andresen, 2004).

More systematic analyses of cross-disability data are needed to examine the associations among disability and sociodemographic characteristics and employment-related outcomes in order to identify those subpopulations of individuals with disabilities who are most at risk for poor employment outcomes. In addition, there is a need

for further information about the barriers to, and facilitators of, employment for specific subpopulations, which can be used to design interventions to improve the employment outcomes of members of these specific subpopulations.

References:

Crisp, R. (2005). Key factors related to vocational outcome: Trends for six disability groups. Journal of Rehabilitation, 71, 30–37.

Krause, J. S. (2003). Years to employment after spinal cord injury. Archives of Physical Medicine & Rehabilitation, 84, 1282–1289.

Krause, J., Terza, J. (2006). Injury and demographic factors predictive of disparities in earnings after spinal cord injury. Archives of Physical Medicine and Rehabilitation, 87, 1318–1326.

Meade, M., A.L., Njeri, J.M., & Hess, D. (2004). Race, employment, and spinal cord injury. Archives of Physical Medicine and Rehabilitation, 85, 1782–1792.

Ozawa, M.N., & Yeo, Y., H. (2006). Work status and work performance of people with disabilities. Journal of Disability Policy Studies, 17, 180–190.

Phillips, L., & Stuifbergen, A. (2006). Predicting continued employment in persons with multiple sclerosis. Journal of Rehabilitation, 72, 35–43.

Randolph, D.W., & Andresen, E.M. (2004). Disability, gender, and unemployment relationships in the United States from the behavioral risk factor surveillance system. Disability & Society, 19, 403–414.

Steinmetz, E. (2006). Americans With Disabilities: 2002. Household Economic Studies Current Population Reports P70–107 Washington, DC: U.S. Census Bureau. *See http://www.census.gov/hhes/www/disability/sipp/disable02.html.*

U.S. Census Bureau (2006). American Community Survey table B1802: Selected Economic Characteristics for the Civilian Noninstitutionalized Population By Disability Status. Washington, DC: U.S. Census Bureau. *See http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2006_EST_G00_S1802&-geo_id=01000US&-ds_name=ACS_2006_EST_G00_&-_lang=en&-format=&-CONTEXT=st.*

U.S. Department of Labor (2009). Labor force statistics from the current population survey. *See http://www.bls.gov/cps/cpsdisability.htm.*

Walker, W., Marwitz, J., Kreutzer, J., Hart, T., & Novack, T. (2006). Occupational categories and return to work after traumatic brain injury: A multicenter study. Archives of Physical Medicine and Rehabilitation, 87, 1576–1582.

Proposed Priority: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Individual-Level Characteristics Related to Employment Among Individuals with Disabilities. This RRTC must identify subpopulations of individuals with disabilities who are at risk of poor employment outcomes, and document the barriers to, and facilitators of, employment that these subgroups experience. This new knowledge is intended to serve as a foundation for future interventions research that will target those who are most at risk of poor employment outcomes. The RRTC must be designed to contribute to the following outcomes:

(a) A synthesis of available knowledge about employment disparities among subpopulations of individuals with disabilities. The RRTC must contribute to this outcome by conducting a review and synthesis of existing research on individual-level characteristics related to successful and poor employment outcomes among individuals with disabilities. Such individual-level characteristics may include, but are not limited to the following: disabling condition, severity of disability, age, gender, race, ethnicity, socioeconomic status, education level, and urban/rural status. Successful and poor employment outcomes may be measured by the following indicators: an individual's employment status (*e.g.,* employed, unemployed, underemployed), income, and job retention or promotion. The RRTC must complete this activity by the end of the first year of the grant.

(b) New knowledge about the individual-level characteristics that are most strongly associated with employment-related outcome variables among individuals with disabilities. The RRTC must contribute to this outcome by conducting research on the extent to which employment of individuals with disabilities is related to individual-level characteristics. This research must include, but is not limited to, multivariate analyses of existing national datasets. Analyses of existing data must examine possible variations of employment, including full- or part-time work, self-employment, and industry sector. The RRTC must complete this activity by the end of the second year of the grant.

(c) New knowledge of the employment experiences of individuals who are at risk of poor employment outcomes. The RRTC must contribute to this outcome by collecting and analyzing information from members of subpopulations identified under paragraphs (a) and (b) of this priority. The RRTC must collect individual-level data about the barriers to, and facilitators of, employment that members of these subpopulations have experienced (*e.g.,* the availability of transportation to and from work, social support, workplace accommodations, and employer practices).

(d) Increased incorporation of disability and employment research findings into practice or policy. The RRTC must contribute to this outcome by:

(1) Collaborating with stakeholder groups to develop, evaluate, or implement strategies to promote utilization of the RRTC's research findings.

(2) Conducting training and dissemination activities to facilitate the utilization of the RRTC's research findings by individuals with disabilities, employers, policymakers, and State vocational rehabilitation agencies.

In addition, this RRTC must collaborate with relevant Rehabilitation Services Administration grantees, such as the 10 regional Technical Assistance and Continuing Education projects.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of Costs and Benefits: The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge through research and development.

Another benefit of this proposed priority is that the establishment of a new RRTC will improve the lives of individuals with disabilities. The new RRTC will disseminate and promote the use of new information that will improve the options for individuals with disabilities to obtain, retain, and advance in employment.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 15, 2009.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E9–30188 Filed 12–17–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Modifications to the Preferred Alternatives for Tank Waste Treatment and Disposal of Off Site Waste in the Draft Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, WA

AGENCY: Department of Energy.

ACTION: Modification of Preferred Alternatives.

SUMMARY: The U.S. Department of Energy (DOE) is modifying its preferred alternatives for tank waste treatment and also for disposal of off-site waste in the *Draft Tank Closure and Waste Management Environmental Impact Statement for the Hanford Site, Richland, Washington* (Draft EIS, DOE/EIS–00391), made available for public comment on October 30, 2009 (74 FR 56194). This Draft EIS has been prepared in accordance with the National Environmental Policy Act (NEPA) and its implementing regulations. The public comment period for the Draft EIS extends to March 19, 2010.

In this Draft EIS, DOE analyzed, as a reasonable alternative, treating and sending waste from specific tanks to the Waste Isolation Pilot Plant (WIPP), in Carlsbad, New Mexico, as mixed transuranic (TRU) waste. DOE is now expressing its preference that no Hanford tank wastes would be shipped to WIPP. These wastes would be retrieved and treated in the Waste Treatment Plant (WTP) being constructed at Hanford. The State of Washington Department of Ecology (Ecology), a cooperating agency on the EIS, has revised its Foreword to the Draft EIS in response to this modification to the preferred alternative for tank waste. That revision can be found under **SUPPLEMENTARY INFORMATION**.

In addition, consistent with DOE's preference regarding receipt at Hanford of off-site low-level radioactive waste (LLW) and low-level mixed waste (MLLW), DOE would not ship Greater-Than-Class-C (GTCC) LLW to Hanford at least until the WTP is operational (DOE is analyzing disposal of GTCC LLW in a separate EIS).

ADDRESSES: The Draft EIS is available electronically through, and written comments can be submitted at, *TC&WMEIS@saic.com,* or by faxing to (1–888) 785–2865. Paper copies may be obtained by request to the EIS website or by contacting: Mary Beth Burandt, Document Manager, TC & WM EIS comments, Office of River Protection, P.O. Box 1178, Richland, Washington 99352.

The Draft EIS is also available at DOE's NEPA Web site at *http://www.gc.energy.gov/nepa.*

Written comments may be mailed to the document manager at the address above. Further, DOE will accept oral as well as written comments on the Draft EIS during public hearings to be announced soon in the **Federal Register** and local media.

FOR FURTHER INFORMATION CONTACT: For further information on the Draft EIS, contact Ms. Burandt at the address above or by telephone, at (1–888) 829–6347. For further information on DOE's NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, Office of General Counsel, U.S. Department of Energy, Washington, DC 20585–0103, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

Further information on the Draft EIS is also available through the Hanford Web site at: *http://www.hanford.gov/orp.*

SUPPLEMENTARY INFORMATION: The *Draft Tank Closure and Waste Management Environmental Impact Statement* has been prepared in accordance with NEPA and its implementing regulations. The Draft EIS analyzes alternatives for proposed actions in three major areas related to the cleanup of the Hanford Site. These are: (1) Retrieving and treating radioactive waste from 177 underground storage tanks at Hanford and closure of the 149 single-shell tanks; (2) decommissioning of the Fast Flux Test Facility, a nuclear test reactor, and its auxiliary facilities; and (3) continued and expanded solid waste management operations on site, including the disposal of Hanford's LLW and MLLW, and limited volumes of LLW and MLLW from other DOE sites. The Draft EIS also analyzes no action alternatives for each of the three types of proposed actions as required under NEPA for use as a basis for comparison of the alternatives.

In the Draft EIS, DOE narrowed its range of preferred alternatives to five (Section S.7.1 of the Summary and Section 2.12 of the main volume). Three of these alternatives contain options for treating the waste from specific tanks as mixed TRU waste (approximately 3 million gallons) that would be prepared as necessary and shipped to WIPP for disposal. Based on further consideration, DOE has concluded that its preference is to manage the waste from these tanks by treating it through the WTP currently under construction as either high-level waste or low-activity

waste as would be the case with the other waste to be treated in each alternative; it would thus not be shipped to WIPP for disposal. Ecology, a cooperating agency on this EIS, has requested the following modification to its Foreword in response to that change:

Ecology acknowledges that subsequent to publishing the draft EIS, DOE has revised its preferred alternative to propose that waste from specific Hanford tanks containing what DOE believes might be mixed TRU waste be treated at Hanford through the WTP. This change does not alter Ecology's expectations concerning this waste. Because Ecology has had, and continues to have, legal and technical concerns with any Hanford tank waste being classified as mixed TRU waste, Ecology has always assumed that the waste would be treated at Hanford through the WTP. Ecology expects that the end date for completing treatment of Hanford's tank waste will not be altered by treating the waste from these specific tanks through the WTP.

Regarding DOE's preferred alternative for waste management, (Section S.7.3 of the Summary and Section 2.12 of the main volume) DOE would not send LLW and MLLW from other DOE sites to Hanford for disposal (with some limited specific exceptions) at least until the WTP is operational, consistent with DOE's proposed settlement agreement with the State of Washington. Off-site waste would be addressed after the WTP is operational subject to appropriate NEPA review. Although the Draft EIS considers the cumulative impacts of the potential receipt of GTCC LLW at Hanford, DOE is preparing a separate EIS on GTCC LLW disposition. However, similar to its preference regarding the importation of LLW and MLLW, DOE announces that it does not prefer to import GTCC LLW to Hanford at least until the WTP is operational.

Issued in Washington, DC, on December 10, 2009.

Inés R. Triay,

Assistant Secretary for Environmental Management.

[FR Doc. E9–30173 Filed 12–17–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 13, 2010, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–2347 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Technetium-99 Contamination in the K–25 Building at the East Tennessee Technology Park.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Patricia J. Halsey at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Patricia J. Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm*.

Issued at Washington, DC on December 14, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–30165 Filed 12–17–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the Biological and Environmental Research Advisory Committee

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App., and section 102–3.65, Title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee has been renewed for a two-year period.

The Committee will provide advice to the Department of Energy's Office of Science on the biological and environmental research programs. The Secretary of Energy has determined that renewal of the Biological and Environmental Research Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on December 14, 2009.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. E9–30161 Filed 12–17–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. ID–4074–007

Good, Lynn J.; Notice of Filing

December 11, 2009.

Take notice that on December 10, 2009, Lynn J. Good filed an application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 USCA

§ 825(b) (2000), and Part 45 of the regulations of the Federal Energy Regulatory Commission, 18 CFR Part 45 (2006).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 31, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–30067 Filed 12–17–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Rate Order No. WAPA–146

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of order concerning firm electric rates.

SUMMARY: The Deputy Secretary of Energy has confirmed and approved Rate Order No. WAPA–146 and Rate Schedule L–F9, placing firm electric service rates from the Loveland Area Projects (LAP) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay investments and irrigation aid within the allowable periods.

DATES: Rate Schedule L–F9 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2010, and will remain in effect until FERC confirms, approves, and places the rate schedule into effect on a final basis ending December 31, 2014, or until the rate schedule is superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Bradley S. Warren, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7201, or Mrs. Sheila D. Cook, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7211, e-mail *scook@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Acting Deputy Secretary of Energy approved existing Rate Schedule L–F8 for firm electric service on an interim basis on January 8, 2009 (74 FR 3015, January 16, 2009), for a 5-year period beginning on February 1, 2009, and ending December 31, 2013.[1] Under Rate Schedule L–F8, the composite rate is 37.24 mills per kilowatthour (mills/kWh), the firm energy rate is 18.62 mills/kWh, and the firm capacity rate is $4.88 per kilowattmonth (kWmonth). This Rate Schedule is formula based, providing for an increase in the Drought Adder rate component of up to 2 mills/kWh without a formal public process.

The current rate, including a 2 mills/kWh increase provided for under the Drought Adder rate component, is not sufficient to meet the LAP revenue requirement. As a result, the LAP firm electric service rates must be increased mostly due to the financial impacts of the drought. The drought is causing a decrease in hydro-power generation, leading to an increase in purchase power expenses and a decrease in revenue from non-firm energy sales. Additional increases are being driven by slight increases in operation and maintenance costs, as well as the inclusion of additional transmission costs associated with the wheeling of Mt. Elbert generation in the Fryingpan-Arkansas Power Repayment Study.

Rate Schedule L–F8 is being superseded by Rate Schedule L–F9. Under Rate Schedule L–F9, the provisional rates for firm electric service will result in a composite rate of 41.42 mills/kWh. The firm energy rate will be 20.71 mills/kWh (a Base component of 12.54 mills/kWh and a Drought Adder component of 8.17 mills/kWh) and the capacity rate will be $5.43/kWmonth (a Base component of $3.29/kWmonth and a Drought Adder component of $2.14/kWmonth). This is an 11.2 percent increase when compared to the LAP firm electric rates under Rate Schedule L–F8.

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 the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing Department of Energy procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00C, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–146, the proposed LAP firm electric service rates, into effect on an interim basis.

The new Rate Schedule L–F9 will be promptly submitted to FERC for confirmation and approval on a final basis.

[1] FERC confirmed and approved Rate Order WAPA–142 on June 26, 2009, in Docket No. EF09–5181. *See United States Department of Energy, Western Area Power Administration, Loveland Area Projects,* 127 FERC ¶ 62,245.

Dated: December 14, 2009.

Daniel B. Poneman,

Deputy Secretary.

Department of Energy Deputy Secretary

[Rate Order No. WAPA–146]

In the matter of: Western Area Power Administration Rate Adjustment for the Loveland Area Projects; Order Confirming, Approving, and Placing the Loveland Area Projects Firm Electric Service Rates Into Effect on an Interim Basis

These rates for the Loveland Area Projects were established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of Western; (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 Federal Energy Regulatory Commission. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

Administrator: The Administrator of the Western Area Power Administration.

Base: Revenue requirement component of the firm electric service rate including annual operation and maintenance expenses, investment repayment and associated interest, normal timing power purchases, and transmission costs.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts.

Capacity Rate: The rate which sets forth the charges for capacity. It is expressed in dollars per kilowattmonth and applied to each kilowatt of the Contract Rate of Delivery (CROD).

Composite Rate: The rate for commercial firm power which is the total annual revenue requirement for capacity and energy divided by the total annual energy sales. It is expressed in mills per kilowatthour and used for comparison purposes.

Criteria: The Post-1989 General Power Marketing and Allocation Criteria for the sale of energy with capacity from the Pick-Sloan Missouri Basin Program—Western Division and the Fryingpan-Arkansas Project.

Customer: An entity with a contract that is receiving firm electric service from Western's Rocky Mountain Region.

Deficits: Deferred or unrecovered annual and/or interest expenses.

DOE: The United States Department of Energy.

DOE Order RA 6120.2: An order outlining power marketing administration financial reporting and rate-making procedures.

Drought Adder: Formula-based revenue requirement component including costs associated with the drought.

Energy: Power produced or delivered over a period of time. It is expressed in kilowatthours.

Energy Rate: The rate which sets forth the charges for energy. It is expressed in mills per kilowatthour and applied to each kilowatthour delivered to each Customer.

FERC: The Federal Energy Regulatory Commission.

Firm: A type of product and/or service always available at the time requested by a Customer.

FRN: **Federal Register** notice.

Fry–Ark: Fryingpan-Arkansas Project.

FY: Fiscal year; October 1 to September 30.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.

LAP: Loveland Area Projects.

L–F8: Loveland Area Projects existing firm electric service rate schedule (expires December 31, 2013, or until superseded).

L–F9: Loveland Area Projects provisional firm electric service rate schedule to be effective January 1, 2010 (to expire December 31, 2014, or when superseded).

M&I: Municipal and Industrial water development.

mills/kWh: Mills per kilowatthour—the unit of charge for energy (equal to one tenth of a cent or one thousandth of a dollar).

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

Non-timing Power Purchases: Power purchases that are not related to operational constraints such as management of endangered species, species habitat, water quality, navigation, and control area purposes.

O&M: Operation and Maintenance.

P–SMBP: The Pick-Sloan Missouri Basin Program.

P–SMBP—ED: Pick-Sloan Missouri Basin Program—Eastern Division.

P–SMBP—WD: Pick-Sloan Missouri Basin Program—Western Division.

Power: Capacity and energy.

Power Factor: The ratio of real to apparent power at any given point and time in an electrical circuit. Generally, it is expressed as a percentage.

Preference: The provisions of Reclamation Law which require Western to first make Federal power available to certain entities. For example, section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) states that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936.

Provisional Rate: A rate which has been confirmed, approved and placed into effect on an interim basis by the Deputy Secretary of Energy.

PRS: Power Repayment Study.

Rate Brochure: An August 2009 document explaining the rationale and background for the rate proposal contained in this Rate Order.

Ratesetting PRS: The PRS used for the rate adjustment period.

Reclamation: The United States Department of the Interior, Bureau of Reclamation.

Reclamation Law: A series of Federal laws that contain the framework under which Western markets power.

Regions: Western's Rocky Mountain Region and Upper Great Plains Region.

Revenue Requirement: The revenue required to recover annual expenses (such as O&M, purchase power, transmission service expenses, interest and deferred expenses) and repay Federal investments and other assigned costs.

Rocky Mountain Region: The Rocky Mountain Customer Service Region of the Western Area Power Administration.

Upper Great Plains Region: The Upper Great Plains Customer Service Region of the Western Area Power Administration.

Western: The United States Department of Energy, Western Area Power Administration.

Effective Date

The provisional rates will take effect on the first day of the first full billing period beginning on or after January 1, 2010, and will remain in effect until December 31, 2014, pending approval by FERC on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were as follows:

1. The proposed rate adjustment process began March 17, 2009, when Western's Rocky Mountain Region mailed a notice announcing informal meetings to all LAP preference Customers and interested parties.

2. The informal meetings were held on April 15, 2009, in Sioux Falls, South Dakota, and on April 16, 2009, in Northglenn, Colorado. At these informal meetings, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

3. A **Federal Register** notice, published on July 14, 2009 (74 FR 34009), announced the proposed rates for LAP, began the public consultation and comment period, and announced the public information and public comment forums.

4. On July 14, 2009, Western mailed letters to all LAP preference Customers and interested parties transmitting the FRN published on July 14, 2009.

5. On August 18, 2009, at 9 a.m. (MDT), Western held a public information forum at the Ramada Plaza Hotel in Northglenn, Colorado. Western provided updates to the proposed firm electric service rates for LAP and P–SMBP—ED. Western also answered questions and gave notice that more information was available in the Rate Brochure.

6. On August 18, 2009, at 11 a.m. (MDT), following the public information forum, a public comment forum was held. The comment forum gave the public an opportunity to comment for the record. No oral or written comments were received at this forum.

7. Western provided a Website with all of the letters, time frames, dates and locations of forums, documents discussed at the information meetings, FRNs, Rate Brochure, and all other information about this rate process. The Web site is located at h*ttp://www.wapa.gov/rm/ratesRM/2010/default.htm.*

8. Western received one comment letter and no oral comments during the consultation and comment period, which ended October 13, 2009. All formally submitted comments have been considered in preparing this Rate Order.

Comments

Written comments were received from the following organization:

Mid-West Electric Consumers Association

Project Descriptions

Loveland Area Projects

The Post-1989 General Power Marketing and Allocation Criteria, published in the **Federal Register** on January 31, 1986 (51 FR 4012), integrated the resources of the P–SMBP—WD and Fry-Ark. This operational and contractual integration, known as LAP, allowed an increase in marketable resource, simplified contract administration, and established a blended rate for LAP power sales. The Rocky Mountain Region markets LAP power in northeastern Colorado, east of the Continental Divide in Wyoming, west of the 101st meridian in Nebraska, and most of Kansas.

The P–SMBP—WD and Fry-Ark retain separate financial status. For this reason, separate PRSs are prepared annually for each project. These PRSs are used to determine the sufficiency of the firm electric service rate to generate adequate revenue to repay project investment and costs during each project's prescribed repayment period. The revenue requirement of the Fry-Ark PRS is combined with the P–SMBP—WD revenue requirement, derived from the P–SMBP PRS, to develop one rate for LAP firm electric sales.

Pick-Sloan Missouri Basin Program—Western Division

The P–SMBP was authorized by Congress in Section 9 of the Flood Control Act of December 22, 1944, commonly referred to as the Flood Control Act of 1944. This multipurpose program provides flood control, irrigation, navigation, recreation, preservation and enhancement of fish and wildlife, and power generation. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

In addition to the multipurpose water projects authorized by Section 9 of the Flood Control Act of 1944, certain other existing projects have been integrated with the P–SMBP for power marketing, operation, and repayment purposes. The Colorado-Big Thompson, Kendrick, and Shoshone Projects were combined with the P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are referred to as the ''Integrated Projects'' of the P–SMBP.

The Flood Control Act of 1944 also authorized the inclusion of the Fort Peck Project with the P–SMBP for operation and repayment purposes. The Riverton Project was integrated with the P–SMBP in 1954, and in 1970 was reauthorized as a unit of P–SMBP.

The P–SMBP is administered by two regions. The Rocky Mountain Region, with a regional office in Loveland, Colorado, markets the Western Division power of P–SMBP through LAP. The Upper Great Plains Region, with a regional office in Billings, Montana, markets power from the Eastern Division of P–SMBP. Eastern Division power is marketed in western Iowa, western Minnesota, Montana, east of the Continental Divide, North Dakota, South Dakota, and the eastern two-thirds of Nebraska. P–SMBP power is marketed to approximately 54 firm power Customers by the Rocky Mountain Region and approximately 300 firm power Customers by the Upper Great Plains Region.

Fryingpan-Arkansas Project

Fry-Ark is a trans-mountain diversion development in southeastern Colorado authorized by the Act of Congress on August 16, 1962 (Pub. L. 87–590, 76 Stat. 389, as amended by Title XI of the Act of Congress on October 27, 1974 (Pub. L. 93–493, 88 Stat. 1486, 1497)). The Fry-Ark diverts water from the Fryingpan River and other tributaries of the Roaring Fork River in the Colorado River Basin on the West Slope of the Rocky Mountains to the Arkansas River on the East Slope. The water diverted from the West Slope, together with regulated Arkansas River water, provides supplemental irrigation and M&I water supplies, and produces hydroelectric power. Flood control, fish and wildlife enhancement, and recreation are other important purposes of Fry-Ark. The only generating facility in Fry-Ark is the Mt. Elbert Pumped-Storage powerplant on the East Slope.

Power Repayment Studies—Firm Electric Service Rate

Western prepares PRSs each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the LAP. Repayment criteria are based on Western's applicable laws and legislation, as well as policies including DOE Order RA 6120.2. To meet Cost Recovery Criteria outlined in DOE Order RA 6120.2, revised studies and rate adjustments have been developed to demonstrate that sufficient revenues will be collected under the proposed rates to meet future obligations.

Existing and Provisional Rates

A comparison of the existing and provisional rates for LAP firm electric service follows:

TABLE 1—COMPARISON OF EXISTING AND PROVISIONAL RATES LAP FIRM ELECTRIC SERVICE

Firm electric service	Existing rate (February 1, 2009) L–F8	Provisional rate L–F9	Percent change
LAP Revenue Requirement (million)	$75.9	$84.5	11.2
LAP Composite Rate (mills/kWh)	37.24	41.42	11.2
Firm Energy Rate (mills/kWh)	18.62	20.71	11.2
Firm Capacity Rate ($/kWmonth)	$4.88	$5.43	11.2

Certification of Rates

Western's Administrator certified that the provisional rates for LAP firm electric service under Rate Schedule L–F9 are the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

LAP Firm Electric Service Rate Discussion

According to Reclamation Law, Western must establish power rates sufficient to recover O&M, purchased power and interest expenses, and repay power investment and irrigation aid.

The Criteria, published in the **Federal Register** on January 31, 1986 (51 FR 4012), operationally and contractually integrated the resources of the P–SMBP—WD and Fry-Ark (thereafter referred to as LAP). A blended rate was established for the sale of LAP firm electric service. The P–SMBP—WD portion of the revenue requirement for LAP firm electric service rates was developed from the revenue requirement calculated in the P–SMBP Ratesetting PRS. The P–SMBP—WD revenue requirement increased approximately 13 percent from the previous revenue requirement due to the financial impact of the drought, increased annual expenses, increased investments, and increased interest expenses associated with deficits. The revenue requirements for P–SMBP—WD are as follows:

TABLE 2—SUMMARY OF P–SMBP—WD REVENUE REQUIREMENTS ($000)

Current Revenue Requirement (Feb 09):	
(30.89 mills/kWh × 1,988,000,000 kWh)	$61,409
Provisional Increase:	
Base: 0.25 mills/kWh × 1,988,000,000 kWh	497
Drought Adder: 3.66 mills/kWh × 1,988,000,000 kWh	7,276
	7,773
Provisional Revenue Requirement:	
(30.89 + 3.91 = 34.80 mills/kWh × 1,988,000,000 kWh)	69,182

The adjustment to the P–SMBP—ED revenue requirement is a separate formal rate process which is documented in Rate Order No. WAPA–147. Rate Order No. WAPA–147 is also scheduled to go into effect on the first day of the first full billing period on or after January 1, 2010.

Fry-Ark

The Fry-Ark portion of the revenue requirement for LAP firm electric service rates was developed from the revenue requirement calculated in the Fry-Ark Ratesetting PRS. The Fry-Ark revenue requirement increased approximately 5 percent due to increased transmission expenses and the financial impact of the drought. The revenue requirements for Fry-Ark are as follows:

TABLE 3—SUMMARY OF FRY-ARK REVENUE REQUIREMENTS ($000)

Current Revenue Requirement (Feb 09):	$14,545
Provisional Increase:	
Base	773
Drought Adder	10
	783
Provisional Revenue Requirement	15,328

The following table compares LAP existing revenue requirements to the proposed revenue requirements:

TABLE 4—SUMMARY OF LAP REVENUE REQUIREMENTS ($000)

	Existing (February 2009)	Provisional
P–SMBP—WD	$61,409	$69,182
Fry–Ark	14,545	15,328

TABLE 4—SUMMARY OF LAP REVENUE REQUIREMENTS ($000)—Continued

	Existing (February 2009)	Provisional
Total LAP ...	75,954	84,510

Under Rate Schedule L–F9, Western will continue to identify its firm electric service revenue requirement using Base and Drought Adder components. The Base component is a fixed revenue requirement for each project that includes annual O&M expenses, investment repayment and associated interest, normal timing power purchases, and transmission costs. Normal timing power purchases are purchases due to operational constraints (*e.g.,* management of endangered species habitat, water quality, navigation, control area purposes, etc.) and are not associated with drought conditions in the Regions. The Base component cannot be adjusted by Western without a public process.

The Drought Adder component for each project is a formula-based revenue requirement that includes costs attributable to the drought conditions in the Regions. The Drought Adder component includes costs associated with future non-timing power purchases to meet firm electric service contractual obligations not covered with available system generation due to the drought, previously incurred deficits due to purchased power debt that resulted from non-timing power purchases made during the drought, and the interest associated with the previously incurred and future drought debt. The Drought Adder component is designed to repay the drought debt within 10 years from the time the debt was incurred using balloon-payment methodology. For example, the drought debt incurred by Western in FY 2008 will be repaid by FY 2018.

The annual revenue requirement calculation will continue to be summarized by the following formula: Annual Revenue Requirement = Base Revenue Requirement + Drought Adder Revenue Requirement. Under this provisional rate, the LAP annual revenue requirement is $84.5 million and is comprised of a Base revenue requirement of $51.2 million plus a Drought Adder revenue requirement of $33.3 million.

A comparison of the current and proposed rate components are listed in the following table:

TABLE 5—SUMMARY OF LAP COMPONENTS

	Existing rates L–F8			Provisional rates L–F9		
	Base	Drought adder	Total	Base	Drought adder	Total
Firm Capacity ($/kW–month) ...	$3.21	$1.67	$4.88	$3.29	$2.14	$5.43
Firm Energy (mills/kWh) ...	12.23	6.39	18.62	12.54	8.17	20.71

Continuing to identify the firm electric service revenue requirement using Base and Drought Adder components will assist Western in presenting the effects of the drought within the Regions, demonstrating repayment of the drought related costs, and allow Western to be more responsive to changes in drought related expenses. Western will continue to charge and bill Customers firm electric service rates for energy and capacity, which are the sum of the Base and Drought Adder components.

Western reviews its firm electric service rates annually. Western will review the Base rate component after the annual PRSs are complete, generally in the first quarter of the calendar year. If an adjustment to the Base rate component is necessary, Western will initiate a public process pursuant to 10 CFR part 903 prior to making an adjustment.

In accordance with the original implementation of the Drought Adder component, Western will review the Drought Adder component each September to determine if drought costs differ from those projected in the PRSs. If drought costs differ, Western will determine whether an adjustment to the Drought Adder component is necessary. Western will notify Customers by letter each October of the planned incremental or decremental adjustment and implement the adjustment in the following January billing cycle. Although decremental adjustments to the Drought Adder will occur as drought costs are repaid, the adjustments cannot result in a negative Drought Adder rate component. To give customers advance notice, Western will conduct a preliminary review of the Drought Adder in early summer and notify Customers by letter of any estimated change to the Drought Adder for the following January. Western will verify final Drought Adder rate component adjustment by notification in the October letter to the Customers. Implementing the Drought Adder rate component adjustment on January 1 of each year will help keep the drought deficits from escalating as quickly, will lower the interest expense due to drought deficits, will demonstrate responsible deficit management, and will provide prompt drought deficit repayments.

Western's current and provisional rate schedules provide for a formula-based adjustment of the Drought Adder rate component of up to 2 mills/kWh. The 2 mills/kWh cap is intended to place a limit on the amount the Drought Adder formula can be adjusted relative to associated drought costs without initiating a public process to recover costs attributable to the Drought Adder formula rate for any one-year cycle.

Statement of Revenue and Related Expenses

The following table provides a summary of projected revenue and expense data for the Fry-Ark firm electric service revenue requirement through the 5-year provisional rate approval period:

TABLE 6—FRY–ARK COMPARISON OF 5-YEAR RATE APPROVAL PERIOD (FY 2010–2014) TOTAL REVENUE AND EXPENSE ($000)

	Existing rate	Provisional rate	Difference
Total Revenues ...	$78,983	$84,897	$5,914
Revenue Distribution:			

TABLE 6—FRY–ARK COMPARISON OF 5-YEAR RATE APPROVAL PERIOD (FY 2010–2014) TOTAL REVENUE AND EXPENSE ($000)—Continued

	Existing rate	Provisional rate	Difference
Expenses:			
O&M [1]	$28,868	$25,307	$ − 3,561
Purchase Power	1,398	1,077	− 321
Transmission	20,027	20,671	644
Interest [2]	21,383	20,243	− 1,140
Total Expenses	71,676	67,298	− 4,378
Principal Payments:			
Capitalized Expenses (deficits)	0	0	0
Original Project and Additions [3]	1,762	14,214	12,452
Replacements [3]	5,545	3,385	− 2,160
Total Principal Payments	7,307	17,599	10,292
Total Revenue Distribution	78,983	84,897	5,914

[1] The decrease in O&M expense is due to changes reflected in Reclamation's FY 2010 work plan.
[2] The decrease in interest expense is primarily due to a increased repayment over the 5-year period.
[3] The difference in principal payments is due to increased revenue being available for repayment during the 5-year period.

The summary of P–SMBP—WD revenues and expenses for the 5-year provisional rate approval period is included in the P–SMBP Statement of Revenue and Related Expenses that is part of Rate Order No. WAPA–147.

Basis for Rate Development

The existing rates for LAP firm electric service in Rate Schedule L–F8, which expire December 31, 2013, no longer provide sufficient revenues to pay all annual costs, including interest expense, and repay investments and irrigation aid within the allowable period. The adjusted rates reflect increases due to the financial impact of the drought, increased annual expenses, increased investments, and increased interest expense associated with investments and drought deficits. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expenses, and repay investments and irrigation aid within the allowable periods. The provisional rates will take effect on the first day of the first full billing period beginning on or after January 1, 2010, and will remain in effect on an interim basis, pending FERC's confirmation and approval of them or substitute rates on a final basis, through December 31, 2014.

Comments

The comment and response below regarding the firm electric service rates is paraphrased for brevity when not affecting the meaning of the statement(s).

Comment: One Customer representative recognized the impacts that the extended drought has had on the current financial status of the P–SMBP and stated that the repayment of Federal investment through Federal power rates is taken very seriously by the Customers. This Customer representative also stated that, while recent forecasts of Pick-Sloan generation suggest improved revenues over those projected when Western began this public process, the customer representative does not think it would be appropriate for Western to attempt to adjust its proposed rate in the middle of this public process. The customer representative noted that, should generation and revenues witness a dramatic improvement, Western has the capability to adjust the Drought Adder up to 2 mills without going through a full public process.

Response: Western acknowledges the financial impact of the extended drought and the need for a firm power rate increase, as well. Western recognizes the Firm Power Customers' serious commitment to power repayment. Western agrees that it would not be appropriate to adjust the proposed rate in the middle of this public process, but recognizes that it has the ability to make subsequent changes to the rate through the Drought Adder in the event of changes in forecast generation and revenues.

Availability of Information

Information about this rate adjustment, including the PRSs, comments, letters, memorandums and other supporting materials, that was used to develop the provisional rates is available for public review in the Rocky Mountain Regional Office, Western Area Power Administration, 5555 E. Crossroads Boulevard, Loveland, Colorado.

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (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 has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The Provisional Rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective on the first full billing period on or after January 1, 2010, Rate Schedule L–F9 for the Loveland Area Projects of the Western Area Power Administration. The rate schedule shall remain in effect on an interim basis, pending FERC's confirmation and approval of them or substitute rates on a final basis through December 31, 2014.

Dated: December 14, 2009.

Daniel B. Poneman

Deputy Secretary

Rate Schedule L–F9

(Supersedes Rate Schedule L–F8)

Effective January 1, 2010

United States Department of Energy
Western Area Power Administration

Loveland Area Projects Colorado, Kansas, Nebraska, Wyoming

Schedule of Rates For Firm Electric Service

(Approved Under Rate Order No. WAPA–146)

Effective:

The first day of the first full billing period beginning on or after January 1, 2010, through December 31, 2014.

Available:

Within the marketing area served by the Loveland Area Projects.

Applicable:

To the wholesale power Customers for firm electric service supplied through one meter at one point of delivery, or as otherwise established by contract.

Character:

Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rates:

Capacity Charge: $5.43 per kilowatt of billing capacity.

Energy Charge: 20.71 mills per kilowatthour (kWh) of monthly entitlement.

Billing Capacity: Unless otherwise specified by contract, the billing capacity will be the seasonal contract rate of delivery.

Charge Components:

Base: A fixed revenue requirement that includes operation and maintenance expense, investment repayment and associated interest, normal timing power purchases (purchases due to operational constraints, not associated with drought), and transmission costs. The Base revenue requirement is $51.2 million.

$$\text{Base Capacity} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Firm Billing Capacity}} = \$3.29/\text{kWmonth}$$

$$\text{Base Energy} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Annual Energy}} = 12.54 \text{ mills/kWmonth}$$

Drought Adder: A formula-based revenue requirement that includes future purchase power expense in excess of timing purchases, previous purchase power drought deficits, and interest on the purchase power drought deficits. For the period beginning on or after the first day of the first full billing period beginning on or after January 1, 2010, the Drought Adder revenue requirement is $33.3 million.

$$\text{Drought Adder Capacity} = \frac{50\% \times \text{Drought Adder Revenue Requirement}}{\text{Firm Billing Capacity}} = \$2.14/\text{kWmonth}$$

$$\text{Drought Adder Energy} = \frac{50\% \times \text{Drought Adder Revenue Requirement}}{\text{Annual Energy}} = 8.17 \text{ mills/kWh}$$

Process:

Any proposed change to the Base component will require a public process. The Drought Adder component may be adjusted annually using the above formulas for any costs attributed to drought of less than or equal to the equivalent of 2 mills/kWh to the LAP composite rate. Any planned incremental adjustment to the Drought Adder component greater than the equivalent of 2 mills/kWh to the LAP composite rate will require a public process.

Adjustments:

For Drought Adder: Adjustments pursuant to the Drought Adder component will be documented in a revision to this rate schedule.

For Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

For Power Factor: None. The Customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

[FR Doc. E9–30147 Filed 12–17–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Rate Order No. WAPA–147

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Order Concerning Firm Power Rates.

SUMMARY: The Deputy Secretary of Energy confirmed and approved Rate Order No. WAPA–147 and Rate Schedules P–SED–F11 and P–SED–FP11, placing firm power and firm peaking power rates from the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) of the Western Area Power Administration (Western) into effect on an interim basis. The provisional rates will be in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other rates. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay power investments and irrigation aid within the allowable periods.

DATES: Rate Schedules P–SED–F11 and P–SED–FP11 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after January 1, 2010, and will remain in effect until FERC confirms, approves, and places the rate schedules in effect on a final basis ending December 31, 2014, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th

Avenue North, Billings, MT 59101–1266, telephone (406) 247–7405, e-mail *rharris@wapa.gov,* or Ms. Linda Cady-Hoffman, Rates Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, (406) 247–7439, e-mail *cady@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Acting Deputy Secretary of Energy approved existing Rate Schedules P–SED–F10 and P–SED–FP10 for P–SMBP—ED firm and firm peaking electric service, respectively, on an interim basis on January 8, 2009 (74 FR 3022, January 16, 2009), for a 5-year period beginning on February 1, 2009, and ending December 31, 2013.[1]

Under Rate Schedule P–SED–F10, the composite rate is 29.34 mills per kilowatthour (mills/kWh), the firm energy rate is 16.71 mills/kWh, and the firm capacity rate is $6.80 per kilowattmonth (kWmonth). Under Rate Schedule P–SED–FP10, the firm peaking capacity rate is $6.20/kWmonth. These Rate Schedules are formula based with Base and Drought Adder components and provide for an up to 2 mills/kWh increase in the Drought Adder component.

The current rate adjustment reflects a rate increase based on the P–SMBP Final Fiscal Year (FY) 2008 Power Repayment Study (PRS). The PRS sets the total annual P–SMBP—ED revenue requirement for 2010 for firm and firm peaking electric service at $320.2 million, or a 13.1 percent increase. The current rates, including the 2 mills/kWh increase provided for under the Drought Adder formula rate component, are not sufficient to meet the P–SMBP—ED revenue requirements.

The P–SMBP—ED revenue requirement increase is mainly attributed to the financial impacts of the drought. A decrease in hydro-power generation has caused purchase power expenses to increase and revenue from non-firm energy sales to decrease. There has been an increase in both the price and volume of purchase power needed to meet contractual commitments to Western's Customers. The purchase price of power is set by supply and demand on the open market.

The existing firm electric service Rate Schedules P–SED–F10 and P–SED–FP10 are being superseded by Rate Schedules P–SED–F11 and P–SED–FP11, respectively. Under Rate Schedule P–SED–F11, the provisional rates for firm electric services will result in a combined composite rate of 33.25 mills/kWh. The energy rate will be 19.05 mills/kWh (a Base component of 9.53 mills/kWh and a Drought Adder component of 9.52 mills/kWh), and the capacity rate will be $7.65/kWmonth (a Base component of $3.80/kWmonth and a Drought Adder component of $3.85/kWmonth). Under Rate Schedule P–SED–FP11, the provisional rates for firm peaking electric services consist of a capacity charge of $6.90/kWmonth (a Base component of $3.45/kWmonth and a Drought Adder component of $3.45/kWmonth) and an energy charge of 19.05 mills/kWh (a Base component of 9.53 mills/kWh and a Drought Adder component of 9.52 mills/kWh).

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 the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing Department of Energy (DOE) procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Under Delegation Order Nos. 00–037.00 and 00–001.00C, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–147, the proposed P–SMBP—ED firm power, and firm peaking power rates into effect on an interim basis.

The new Rate Schedules P–SED–F11 and P–SED–FP11 will be promptly submitted to FERC for confirmation and approval on a final basis.

Dated: December 14, 2009.

Daniel B. Poneman,

Deputy Secretary of Energy.

Department of Energy Deputy Secretary

In the matter of: Western Area Power Administration Rate Adjustment for the Pick-Sloan Missouri Basin Program—Eastern Division; Rate Order No. WAPA–147; Order Confirming, Approving, and Placing the Pick-Sloan Missouri Basin Program—Eastern Division Firm Power and Firm Peaking Power Service Rates into Effect on an Interim Basis.

The firm and firm peaking electric service rates for the Pick-Sloan Missouri Basin Program—Eastern Division were established in accordance with section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s) and other acts that specifically apply to the project involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of Western; (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 Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms and Definitions

As used in this Rate Order, the following acronyms and definitions apply:

Administrator: The Administrator of the Western Area Power Administration.

Base: Revenue requirement component of the power rate including annual operation and maintenance expenses, investment repayment and associated interest, normal timing power purchases, and transmission costs.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts.

Capacity Charge: The rate which sets forth the charges for capacity. It is expressed in dollars per kilowattmonth.

Composite Rate: The rate for commercial firm power which is the total annual revenue requirement for capacity and energy divided by the total annual energy sales. It is expressed in mills per kilowatthour and used for comparison purposes.

CROD: Contract Rate of Delivery. The maximum amount of capacity and energy allocated to a preference Customer for a period specified under a contract.

Customer: An entity with a contract that is receiving service from Western's Upper Great Plains Region.

Deficits: Deferred or unrecovered annual and/or interest expenses.

DOE: United States Department of Energy.

DOE Order RA 6120.2: An order outlining power marketing administration financial reporting and rate-making procedures.

[1] FERC confirmed and approved Rate Order No. WAPA–140 on April 28, 2009, in Docket No. EF09–5031–000. See *United States Department of Energy, Western Area Power Administration, Pick-Sloan Missouri Basin Program,* 127 FERC ¶ 62,075.

Drought Adder: Formula-based revenue requirement component including costs associated with the drought.

Energy: Measured in terms of the work it is capable of doing over a period of time. It is expressed in kilowatthours.

Energy Charge: The rate which sets forth the charges for energy. It is expressed in mills per kilowatthour and applied to each kilowatthour delivered to each Customer.

FERC: Federal Energy Regulatory Commission.

Firm: A type of product and/or service available at the time requested by the Customer.

FRN: **Federal Register** notice.

Fry-Ark: Fryingpan-Arkansas Project.

FY: Fiscal year; October 1 to September 30.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour—the electrical unit of energy that equals 1,000 watts in 1 hour.

kWmonth: Kilowattmonth—the electrical unit of the monthly amount of capacity.

LAP: Loveland Area Projects.

mills/kWh: Mills per kilowatthour—the unit of charge for energy (equal to one tenth of a cent or one thousandth of a dollar).

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347 (2003)).

Non-timing Power Purchases: Power purchases that are not related to operational constraints such as management of endangered species, species habitat, water quality, navigation, control area purposes, etc.

O&M: Operation and Maintenance.

P–SMBP: The Pick-Sloan Missouri Basin Program.

P–SMBP–ED: Pick-Sloan Missouri Basin Program—Eastern Division.

P–SMBP–WD: Pick-Sloan Missouri Basin Program—Western Division.

Power: Capacity and energy.

Power Factor: The ratio of real to apparent power at any given point and time in an electrical circuit. Generally, it is expressed as a percentage.

Preference: The provisions of Reclamation Law which require Western to first make Federal power available to certain entities. For example, section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) states that preference in the sale of Federal power shall be given to municipalities and other public corporations or agencies and also to cooperatives and other nonprofit organizations financed in whole or in part by loans made under the Rural Electrification Act of 1936.

Provisional Rate: A rate which has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary of Energy.

PRS: Power Repayment Study.

Rate Brochure: A July 2009 document explaining the rationale and background for the rate proposal contained in this Rate Order.

Reclamation: The United States Department of the Interior, Bureau of Reclamation.

Reclamation Law: A series of Federal laws that contain the framework under which Western markets power.

Revenue Requirement: The revenue required to recover annual expenses (such as O&M, purchase power, transmission service expenses, interest, and deferred expenses) and repay Federal investments and other assigned costs.

RMR: The Rocky Mountain Customer Service Region of the Western Area Power Administration.

UGPR: The Upper Great Plains Customer Service Region of the Western Area Power Administration.

Western: The United States Department of Energy, Western Area Power Administration.

Effective Date

The new provisional rates will take effect on the first day of the first full billing period beginning on or after January 1, 2010, and will remain in effect until December 31, 2014, pending approval by FERC on a final basis.

Public Notice and Comment

Western followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these rates. The steps Western took to involve interested parties in the rate process were:

1. The proposed rate adjustment process began March 17, 2009, when Western's UGPR mailed a notice announcing informal Customer meetings to all P–SMBP–ED preference Customers and interested parties. The informal meetings were held on April 15, 2009, in Sioux Falls, South Dakota, and on April 16, 2009, in Northglenn, Colorado. At these informal meetings, Western explained the rationale for the rate adjustment, presented rate designs and methodologies, and answered questions.

2. A **Federal Register** notice, published on July 14, 2009 (74 FR 34012), announced the proposed rates for P–SMBP–ED, began a public consultation and comment period and announced the public information and public comment forums.

3. On July 14, 2009, Western mailed letters to all P–SMBP–ED preference Customers and interested parties transmitting the FRN published on July 14, 2009.

4. On August 18, 2009, at 9 a.m. (MDT), Western held a public information forum at the Ramada Plaza Hotel in Northglenn, Colorado. Western provided updates to the proposed firm power rates for the P–SMBP, which encompasses the P–SMBP–ED and LAP rates. Western also answered questions and gave notice that more information was available in the rate brochure.

5. On August 18, 2009, at 11 a.m. (MDT), following the public information forum, at the same location, a public comment forum was held. The comment forum gave the public an opportunity to comment for the record. No oral or written comments were received at this forum.

6. On August 19, 2009, at 9 a.m. (CDT), Western held a public information forum at the Holiday Inn in Sioux Falls, South Dakota. Western provided updates to the proposed firm power rates for the P–SMBP–ED. Western also answered questions and gave notice that more information was available in the rate brochure.

7. On August 19, 2009, at 11 a.m. (CDT), following the public information forum, and at the same location, a public comment forum was held. The comment forum gave the public an opportunity to comment for the record. Two oral comments and two exhibits were received at this forum.

8. Western provided a website which contains all of the letters, time frames, dates, and locations of forums, documents discussed at the information meetings, FRNs, rate brochure, and all other information about this rate process for easy Customer access. The Web site is located at *http://www.wapa.gov/ugp/rates/2010FirmRateAdjust.*

9. During the consultation and comment period, which ended October 13, 2009, Western received one comment letter.

All comments received have been considered in preparing this Rate Order.

Comments

Written comment was received from the following organization: Mid-West Electric Consumers Association, Colorado.

Two representatives of the following organization made oral comments and submitted exhibits: Rosebud Sioux Tribe's Utilities Commission, South Dakota.

Project Description

The P–SMBP was authorized by Congress in Section 9 of the Flood Control Act of December 22, 1944, commonly referred to as the Flood Control Act of 1944. This multipurpose program provides flood control, irrigation, navigation, recreation, preservation and enhancement of fish and wildlife, and power generation. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

In addition to the multipurpose water projects authorized by Section 9 of the

Flood Control Act of 1944, certain other existing projects have been integrated with the P–SMBP for power marketing, operation, and repayment purposes. The Colorado-Big Thompson, Kendrick, and Shoshone Projects were combined with the P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are referred to as the ''Integrated Projects'' of the P–SMBP.

The Flood Control Act of 1944 also authorized the inclusion of the Fort Peck Project with the P–SMBP for operation and repayment purposes. The Riverton Project was integrated with the P–SMBP in 1954 and in 1970 was reauthorized as a unit of P–SMBP.

The P–SMBP is administered by two regions. The UGPR, with a regional office in Billings, Montana, markets power from the Eastern Division of P–SMBP, and the RMR, with a regional office in Loveland, Colorado, markets the Western Division power of P–SMBP. The UGPR markets power in western Iowa, western Minnesota, Montana east of the Continental Divide, North Dakota, South Dakota, and the eastern two-thirds of Nebraska. The RMR markets P–SMBP—WD power, which in combination with Fry-Ark power is known as LAP power, in northeastern Colorado, east of the Continental Divide in Wyoming, west of the 101st meridian in Nebraska, and most of Kansas. The P–SMBP power is marketed to approximately 300 firm power Customers by the UGPR and approximately 54 firm power Customers by the RMR.

Power Repayment Study—Firm Power Rate

Western prepares a PRS each FY to determine if revenues will be sufficient to repay, within the required time, all costs assigned to the P–SMBP. Repayment criteria are based on Western's applicable laws and legislation, as well as policies including DOE Order RA 6120.2. To meet Cost Recovery Criteria outlined in DOE Order RA 6120.2, a revised study and rate adjustment has been developed to demonstrate that sufficient revenues will be collected under proposed rates to meet future obligations.

Existing and Provisional Rates

Eastern Division

Under Rate Schedule P–SED–F10, the composite rate is 29.34 mills/kWh, the firm energy rate is 16.71 mills/kWh, and the firm capacity rate is $6.80/kWmonth. For Rate Schedule P–SED–FP10 the firm peaking capacity rate is $6.20/kWmonth. These Rate Schedules are formula based with Base and Drought Adder components and provide for up to a 2 mills/kWh increase in the Drought Adder component.

The current rate adjustment reflects a rate increase based on the P–SMBP FY 2008 PRS. The PRS sets the total annual P–SMBP—ED revenue requirement for FY 2010 for firm and firm peaking electric service at $320.2 million, or a 13.1 percent increase.

A comparison of the existing and provisional firm power and firm peaking power rates follow:

TABLE 1—COMPARISON OF EXISTING AND PROVISIONAL RATES PICK-SLOAN MISSOURI BASIN PROGRAM—EASTERN DIVISION

Firm electric service	Current rates	Provisional rates	Percent change
	P–SED–F10/P–SED–FP10	P–SED–F11/P–SED–FP11	
Rate Schedules:			
Firm and Firm Peaking Revenue Requirement (million)	$283.0	$320.2	13.1
Composite Rate (mills/kWh)	29.34	33.25	13.3
Firm Capacity Rate (/kWmonth)	$6.80	$7.65	12.5
Firm Energy Rate (mills/kWh)	16.71	19.05	14.0
Firm Peaking Capacity Rate (/kWmonth)	$6.20	$6.90	11.3
Firm Peaking Energy Rate (mills/kWh) [1]	16.71	19.05	14.0

[1] Firm Peaking Energy is normally returned. This rate will be assessed in the event Firm Peaking Energy is not returned.

Western Division

The LAP rate is designed to recover the P–SMBP—WD revenue requirement for the P–SMBP and the revenue requirement for Fry-Ark. The adjustment to the LAP rate is a separate formal rate process which is documented in Rate Order No. WAPA–146. Rate Order No. WAPA–146 is also scheduled to go into effect on the first day of the first full billing period on or after January 1, 2010.

Certification of Rates

Western's Administrator certified that the provisional rates for P–SMBP—ED firm power and firm peaking power rates under Rate Schedules P–SED–F11 and P–SED–FP11 are the lowest possible rates consistent with sound business principles. The provisional rates were developed following administrative policies and applicable laws.

P–SMBP—ED Firm Power Rate Discussion

Western is required to establish power rates sufficient to recover operation, maintenance, purchased power and interest expenses, and repay power investment and irrigation aid.

The P–SMBP–ED firm power and firm peaking power rates must be increased due to the financial impact of the drought, increased annual expenses, increased investments, and increased interest expenses associated with debt.

Under Rate Schedule P–SED–F11, Western will continue identifying its firm electric service revenue requirement using Base and Drought Adder components. The Base component is a fixed revenue requirement that includes annual O&M expenses, investment repayment and associated interest, normal timing power purchases, and transmission costs. Western's normal timing power purchases are due to operational constraints (e.g., management of endangered species habitat, water quality, navigation, etc.) and are not associated with drought. The Base component cannot be adjusted by Western without a public process.

The Drought Adder component is a formula-based revenue requirement that includes costs attributable to drought conditions within the P–SMBP. The Drought Adder component includes costs associated with future non-timing power purchases to meet firm power contractual obligations not covered with available system generation due to the drought, previously incurred deficits due to purchased power debt that resulted from non-timing power

purchases made during this drought, and the interest associated with drought debt. The Drought Adder component is designed to repay Western's drought debt within 10 years from the time the debt was incurred, using balloon-payment methodology. For example, the drought debt incurred by Western in FY 2008 will be repaid by FY 2018.

The annual revenue requirement calculation will continue to be summarized by the following formula: Annual Revenue Requirement = Base Revenue Requirement + Drought Adder Revenue Requirement. Under this provisional rate, the P–SMBP–ED annual revenue requirement equals $332.8 million and is comprised of a Base revenue requirement of $166 million plus a Drought Adder revenue requirement of $166.8 million. Both the Base and Drought Adder components recover portions of the firm power revenue requirement, firm peaking power, and associated 5 percent discount revenue necessary to equal the P–SMBP–ED revenue requirement. A comparison of the current and proposed rate components are listed in Table 2.

TABLE 2—SUMMARY OF P–SMBP—ED RATE COMPONENTS

	Existing rates P–SED–F10/P–SED–FP10			Provisional rates P–SED–F11/P–SED–FP11		
	Base component	Drought adder component	Total	Base component	Drought adder component	Total
Firm Capacity Rate (/kWmonth)	$3.80	$3.00	$6.80	$3.80	$3.85	$7.65
Firm Energy Rate (mills/kWh)	9.27	7.44	16.71	9.53	9.52	19.05
Firm Peaking Capacity Rate (/kWmonth)	$3.40	$2.80	$6.20	$3.45	$3.45	$6.90
Firm Peaking Energy Rate (mills/kWh) [1]	9.27	7.44	16.71	9.53	9.52	19.05

[1] Firm peaking energy is normally returned. This will be assessed in the event firm peaking energy is not returned.

As set forth in Table 2 above, provisional Rate Schedule P–SED–F11 has a firm capacity rate of $7.65/kWmonth and a firm energy rate of 19.05 mills/kWh. Under Rate Schedule P–SED–FP11, the firm peaking capacity rate will increase to $6.90/kWmonth, or an 11 percent increase. Peaking energy is either returned to Western or paid for in accordance with the terms of the contract between Western and the peaking power Customer.

Continuing to identify the firm electric service revenue requirement using Base and Drought Adder components will assist Western in presenting the effects of the drought within the P–SMBP, demonstrating repayment of the drought related costs, and allow Western to be more responsive to changes in drought related expenses. Western will continue to charge and bill Customers firm electric service rates for energy and capacity, which are the sum of the Base and Drought Adder components.

Western reviews its firm electric service rates annually. Western will review the Base component after the annual PRS is completed, generally in the first quarter of the calendar year. If an adjustment to the Base component is necessary, Western will initiate a public process pursuant to 10 CFR part 903 prior to making an adjustment.

In accordance with the original implementation of the Drought Adder component, Western will continue to review the Drought Adder component each September to determine if drought costs differ from those projected in the PRS. If drought costs differ, Western will determine if an adjustment to the Drought Adder component is necessary. Western will notify Customers by letter each October of the planned incremental or decremental adjustment and implement the adjustment in the January billing cycle. Although decremental adjustments to the Drought Adder component will occur as drought costs are repaid, the adjustments cannot result in a negative Drought Adder component. To give Customers advance notice, Western will conduct a preliminary review of the Drought Adder component in early summer and notify Customers by letter of the estimated change to the Drought Adder component for the following January. Western will verify the final Drought Adder component adjustment by notification in the October letter to the Customers. Implementing the Drought Adder component adjustment on January 1 of each year will help keep the drought deficits from escalating as quickly, will lower the interest expense due to drought deficits, will demonstrate responsible deficit management, and will provide prompt drought deficit repayments.

Western's current and provisional rate schedules provide for a formula-based adjustment of the Drought Adder component of up to 2 mills/kWh. The 2 mills/kWh cap is intended to place a limit on the amount the Drought Adder formula can be adjusted relative to associated drought costs without initiating a public process to recover costs attributable to the Drought Adder formula rate for any one-year cycle.

Statement of Revenue and Related Expenses

The following Table 3 provides a summary of projected revenue and expense data for the total P–SMBP, including both the Eastern and Western Divisions, firm electric service revenue requirement through the 5-year rate approval period.

The firm power rates for both divisions have been developed with the following revenues and expenses for the P–SMBP:

TABLE 3—TOTAL P–SMBP FIRM POWER COMPARISON OF 5-YEAR RATE PERIOD (FY 2010–2014)

[Total revenues and expenses]

	Current rate ($000)	Provisional rate ($000)	Difference ($000)
Total Revenues	$2,417,497	$2,625,336	$207,839
Revenue Distribution			
Expenses:			

TABLE 3—TOTAL P–SMBP FIRM POWER COMPARISON OF 5-YEAR RATE PERIOD (FY 2010–2014)—Continued

[Total revenues and expenses]

	Current rate ($000)	Provisional rate ($000)	Difference ($000)
O&M	859,559	904,884	45,325
Purchased Power	431,180	440,038	8,858
Interest	639,356	650,671	11,315
Transmission	65,963	65,853	(110)
Total Expenses	1,996,058	2,061,446	65,388
Principal Payments:			
Capitalized Expenses (Deficits) [1]	351,517	483,252	131,735
Original Project and Additions [1]	1,546	10,414	8,868
Replacements [1]	2,704	4,825	2,121
Irrigation Aid	65,672	65,399	(273)
Total Principal Payments	421,439	563,890	142,451
Total Revenue Distribution	2,417,497	2,625,336	207,839

[1] Due to the deficit or near deficit conditions between 1999 and 2008, revenues generated in the cost evaluation period are applied toward repayment of deficits rather than repayment of project additions and replacements. All deficits are projected to be repaid by 2017.

Basis for Rate Development

The existing rates for P–SMBP—ED firm power in Rate Schedule P–SED–F10, which expire December 31, 2013, no longer provide sufficient revenues to pay all annual costs, including interest expense, and repay investment and irrigation aid within the allowable period. The adjusted rates reflect increases due to the financial impact of the drought, increased annual expenses, increased investments, and increased interest expense associated with investments and drought deficits. The provisional rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay power investment and irrigation aid within the allowable periods. The provisional rates will take effect on the first full billing period on or after January 1, 2010, and will remain in effect on an interim basis, pending FERC's confirmation and approval of them or substitute rates on a final basis, through December 31, 2014.

Comments

The comments and responses below regarding the firm and firm peaking electric service rates are paraphrased for brevity when not affecting the meaning of the statement(s). Direct quotes from comment letters are used for clarification when necessary.

A. *Comment:* One Customer representative recognized the impacts that the extended drought has had on the current financial status of the P–SMBP and stated that the repayment of Federal investment through Federal power rates is taken very seriously by the Customers. This Customer representative also stated that, while recent forecasts of Pick-Sloan generation suggest improved revenues over those projected when Western began this public process, the customer representative does not think it would be appropriate for Western to attempt to adjust its proposed rate in the middle of this public process. The Customer representative noted that, should generation and revenues witness a dramatic improvement, Western has the capability to adjust the Drought Adder up to 2 mills without going through a full public process.

Response: Western acknowledges the financial impact of the extended drought and the need for a firm power rate increase, as well. Western recognizes the Firm Power Customer's serious commitment to power repayment. Western agrees that it would not be appropriate to adjust the proposed rate in the middle of this public process, but recognizes that it has the ability to make subsequent changes to the rate through the Drought Adder in the event of changes in forecast generation and revenues.

B. *Comment:* Two comments indicated that rates were increased 22 percent last year by their electric co-op serving the majority of Rosebud Sioux Tribe (Tribe) members. The concern is that an additional rate increase will have a big impact on Tribal members. One commenter stated the co-op will disconnect Tribal member's power even in winter months, which can be life-threatening. The LIEAP (Low Income Energy Assistance Program) has fluctuated up and down. Rosebud Sioux Tribe Utilities Commission appreciates the efforts of Western, but cannot afford another rate increase. A position paper was submitted to Western along with a resolution passed by the Tribal council supporting the position.

The position paper states that the Rosebud Sioux Tribe, which is located within Todd County and known to be one of the 10 poorest counties in the nation with an unemployment rate above 80 percent, opposes and cannot support the proposed firm electric 2010 rate adjustment. The position paper further states that a rate increase would directly affect Tribal members who have signed up for the Tribal Bill Crediting Program by decreasing the amount of credit on monthly electric bills.

Response: Western acknowledges the financial impacts of a firm power rate increase and the poverty level which the Tribe continues to endure. The criteria for formulating a base rate is directly related to Western's costs and is not determined by the end-users' ability to pay. Western is only a partial power supplier to the co-op and may not be the sole reason for a co-op rate increase. Western believes that as water returns to the Missouri River Basin and repayment obligations are met, the Drought Adder component of the rate will be reduced.

The Bill Crediting Program mentioned is not directly related to this rate adjustment. The Tribal benefit from the Bill Crediting Program is derived from the difference between Western's composite rate and the supplemental power supplier's composite rate. While this rate adjustment will increase Western's composite rate, it is likely that the composite rates for the supplemental power suppliers will

increase over time, and off-set the impact of this rate increase.

C. *Comment:* One commenter acknowledged that Western is working with Basin Electric on an interconnection agreement for a 100–MW wind farm at Wessington Springs or Winner. The commenter hopes Western looks at the transmission capacity and considers the proposed Tribal wind farms. The Rosebud Sioux Tribe was the recipient of a $1.5 million grant from the Department of Energy for renewable energy on Tribal homelands and hopes Western will support their economic efforts.

Response: This comment is not directly related to the proposed firm power rate action. As set forth in the American Recovery and Reinvestment Act of 2009, Western is actively evaluating transmission proposals to support renewable energy.

Availability of Information

Information about this rate adjustment, including the PRS, comments, letters, memorandums, and other supporting materials that was used to develop the provisional rates is available for public review in the Upper Great Plains Regional Office, Western Area Power Administration, 2900 4th Avenue North, Billings, Montana.

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (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 has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The provisional rates herein confirmed, approved, and placed into effect, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the foregoing and under the authority delegated to me, I confirm and approve on an interim basis, effective on the first full billing period on or after January 1, 2010, Rate Schedules P–SED–F11 and P–SED–FP11 for the Pick-Sloan Missouri Basin Program—Eastern Division Project of the Western Area Power Administration. These rate schedules shall remain in effect on an interim basis, pending FERC's confirmation and approval of them or substitute rates on a final basis through December 31, 2014.

Dated: December 14, 2009.

Daniel B. Poneman,
Deputy Secretary of Energy.

Rate Schedule P–SED–F11
(Supersedes Schedule P–SED–F10)
January 1, 2010

United States Department of Energy
Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska

Schedule of Rates for Firm Power Service (Approved Under Rate Order No. WAPA–147)

Effective: The first day of the first full billing period beginning on or after January 1, 2010, through December 31, 2014.

Available: Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program.

Applicable: To the power and energy delivered to Customers as firm power service.

Character: Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rate:

Capacity Charge: $7.65 for each kilowatt per month (kWmo) of billing capacity.

Energy Charge: 19.05 mills for each kilowatthour (kWh) for all energy delivered as firm power service.

Billing Capacity: The billing capacity will be as defined by the power sales contract.

Charge Components:

Base: A fixed revenue requirement that includes operation and maintenance expense, investments and replacements, interest on investments and replacements, normal timing purchase power (purchases due to operational constraints, not associated with drought), and transmission costs.

$$\text{Base Capacity} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Firm Metered Billing Units}} = \$3.80/\text{kWmo}$$

$$\text{Base Energy} = \frac{50\% \times \text{Base Revenue Requirement}}{\text{Annual Energy}} = 9.53 \text{ mills/kWh}$$

Drought Adder: A formula-based revenue requirement that includes future purchase power above timing purchases, previous purchase power drought deficits, and interest on the purchase power drought deficits.

$$\text{Drought Adder Capacity} = \frac{50\% \times \text{Drought Adder Revenue Requirement}}{\text{Firm Metered Billing Units}} = \$3.85/\text{kWmo}$$

$$\text{Drought Adder Energy} = \frac{50\% \times \text{Drought Adder Revenue Requirement}}{\text{Annual Energy}} = 9.52 \text{ mills/kWh}$$

Process: Any proposed change to the Base component will require a public process.

The Drought Adder may be adjusted annually using the above formulas for any costs attributed to drought of less than or equal to the equivalent of 2 mills/kWh to the Power Repayment Study composite rate. Any planned incremental adjustment to the Drought Adder greater than the equivalent of 2

mills/kWh to the PRS composite rate will require a public process.

Adjustments:

For Character and Conditions of Service: Customers who receive deliveries at transmission voltage may in some instances be eligible to receive a 5-percent discount on capacity and energy charges when facilities are provided by the Customer that results in a sufficient savings to Western to justify the discount. The determination of eligibility for receipt of the voltage discount shall be exclusively vested in Western.

For Billing of Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at 10 times the above rate.

For Power Factor: None. The Customer will be required to maintain a power factor at the point of delivery between 95-percent lagging and 95-percent leading.

Rate Schedule P–SED–FP11
(Supersedes Schedule P–SED–FP10)
January 1, 2010

United States Department of Energy
Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska

Schedule of Rates for Firm Peaking Power Service (Approved Under Rate Order No. WAPA–147)

Effective: The first day of the first full billing period beginning on or after January 1, 2010, through December 31, 2014.

Available: Within the marketing area served by the Eastern Division of the Pick-Sloan Missouri Basin Program, to our Customers with generating resources enabling them to use firm peaking power service.

Applicable: To the power sold to Customers as firm peaking power service.

Character: Alternating current, 60 hertz, three phase, delivered and metered at the voltages and points established by contract.

Monthly Rate:

Capacity Charge: $6.90 for each kilowatt per month (kWmo) of the effective contract rate of delivery for peaking power or the maximum amount scheduled, whichever is greater.

Energy Charge: 19.05 mills for each kilowatthour (kWh) for all energy scheduled for delivery without return.

Charge Components:

Base: A fixed revenue requirement that includes operation and maintenance expense, investment and replacements, normal timing purchase power (purchases due to operational constraints, not associated with drought), and transmission costs.

$$\text{Base Capacity} = \frac{\text{Base Peaking Capacity Revenue Requirement}}{\text{Peaking CROD Billing Units}} = \$3.45/\text{kWmo}$$

Drought Adder: A formula-based revenue requirement that includes future purchase power above timing purchases, previous purchase power drought deficits, and interest on the purchase power drought deficits.

$$\text{Drought Adder Capacity} = \frac{\text{Drought Adder Peaking Capacity Revenue Requirement}}{\text{Peaking CROD Billing Units}} = \$3.45/\text{kWmo}$$

Process: Any proposed change to the Base component will require a public process.

The Drought Adder may be adjusted annually using the above formula for any costs attributed to drought of less than or equal to the equivalent of 2 mills/kWh to the Power Repayment Study composite rate. Any planned incremental adjustment to the Drought Adder greater than the equivalent of 2 mills/kWh to the PRS composite rate will require a public process.

Billing Capacity: The billing capacity will be the greater of (1) the highest 30-minute integrated capacity measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Adjustments:

Billing for Unauthorized Overruns: For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual obligation for peaking capacity and/or energy, such overrun shall be billed at 10 times the above rate.

[FR Doc. E9–30149 Filed 12–17–09; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–397–000]

Cesarie, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 10, 2009.

This is a supplemental notice in the above-referenced proceeding of Cesarie, 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 December 30, 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 Street, 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. E9–30068 Filed 12–17–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–354–000]

Starion Energy, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 10, 2009.

This is a supplemental notice in the above-referenced proceeding of Starion Energy, 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 December 30, 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 Street, 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. E9–30069 Filed 12–17–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8986–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146 or *http://www.epa.gov/compliance/nepa/*.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated July 17, 2009 (74 FR 34754).

Notice: In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register**.

Draft EISs

EIS No. 20090303, ERP No. D–AFS–L65520–OR, Upper Beaver Creek Vegetation Management Project, Proposes to Implement Multiple Resource Management Actions, Pauline Ranger District, Ochoco National Forest, Crook County, OR.

Summary: EPA expressed environmental concerns about riparian habitat impacts. Rating EC2.

EIS No. 20090320, ERP No. D–AFS–L65521–OR, EXF Thinning, Fuel Reduction, and Research Project, Proposal for Vegetation Management and Fuel Reduction within the Lookout Mountain Unit of the Pringle Falls Experimental Forest, Bend/Ft. Rock Ranger District, Deschutes National Forest, Deschutes County, OR

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20090332, ERP No. D–AFS–K65380–NV, Middle Kyle Canyon Complex Project, Construction and Operation of a Recreation Complex within the Spring Mountains National Recreation Area, Humboldt-Toiyabe National Forest, Clark County, NV

Summary: EPA expressed environmental concerns about impacts to water quality, hydrology, aquatic resources, critical habitat, and air quality. EPA requested that these impacts be mitigated. Rating EC2.

EIS No. 20090373, ERP No. DS–BLM–K65352–NV, ON Line Project, (Previously Known as Ely Energy Center) Proposed 236-mile long 500 kV Electric Transmission Line from a new substation near Ely, Nevada approximately 236 mile south to the existing Harry Allen substation near Las Vegas, Clark, Lincoln, Nye and White Pine Counties, NV

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20090379, ERP No. DS–COE–E30037–FL, Brevard County, Florida

Hurricane and Storm Damage Reduction Project, To Reduce the Damages Caused by Erosion and Coastal Storms to Shorefront Structures Along the Mid-Reach Segment, Implementation, Brevard County, FL

Summary: EPA continues to have environmental concerns about the long-term impacts of inundating hard-bottom habitat. Rating EC2.

Final EISs

EIS No. 20090358, ERP No. F–AFS–J65541–MT, Marsh and Tarhead Allotment Management Plans, Proposes to Authorize Grazing of Livestock under 10-year Permits, Lincoln Ranger District, Helena National Forest, Lewis and Clark Counties, MT

Summary: EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20090387, ERP No. F–BLM–K65030–CA, Carrizo Plain National Monument, Draft Resource Management Plan, Implementation, San Luis Obispo County and Portion of western Kern County, CA

Summary: EPA does not object to the proposed project.

Dated: December 15, 2009.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–30126 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8986–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 12/07/2009 Through 12/11/2009

Pursuant to 40 CFR 1506.9.

Notice:

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register.** Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register.**

EIS No. 20090428, Final EIS, NOAA, AK, Bering Sea Chinook Salmon Bycatch Management, Establish New Measures to Minimize Chinook Salmon Bycatch, To Amend the Fishery Management Plan, Implementation, Bering Sea Pollock Fishery, AK, Wait Period Ends: 02/16/2010, Contact: Gretchen Harrington 907–586–7228.

EIS No. 20090429, Draft EIS, BR, ID, Minidoka Dam Spillway Replacement Project, To Prevent Structural Failure of the Minidoka Dam Spillway and Canal Headworks, Lake Walcott, Minidoka County, ID, Comment Period Ends: 02/05/2010, Contact: Allyn Meuleman 208–383–2258.

EIS No. 20090430, Final EIS, USFS, 00, Selway-Bitterroot Wilderness Plants Management Project, To Prevent the Establishment of New Invaders and Reduce the Impacts of Established Invasive Plants on Native Plant Community Stability, Sustainability and Diversity, Nez Perce, Clearwater, Lolo, and Bitterroot National Forests, ID and MT, Wait Period Ends: 02/01/2010, Contact: Chad Benson 208–942–3113.

EIS No. 20090431, Final EIS, FHWA, MO, East Columbia Transportation Project, To Improve the Transportation Network in Eastern Columbia/Boone County by: (1) Extending Route 740 from its Terminus at U.S.–63, along a new Alignment, to I–70 at the existing St. Charles road interchange, (2) Improving existing Broadway (Route WW) to Olivet Road, and (3) Extending Ballenger Lane, from Future Route 740 to Clark Lane, City of Columbia, Boone County, MO, Wait Period Ends: 01/19/2010, Contact: Peggy Casey 593–636–7104.

EIS No. 20090432, Draft EIS, NPS, DC, National Mall Plan, To Prepare a Long-Term Plan that will Restore National Mall, Implementation, Washington, DC, Comment Period Ends: 03/17/2010, Contact: Susan Spain 202–245–4692.

EIS No. 20090433, Final EIS, USFS, CA, Lassen National Forest, Motorized Travel Management Plan, Implementation, Butte, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama Counties, CA, Wait Period Ends: 01/19/2010, Contact: Christopher O'Brien 520–252–6698.

EIS No. 20090434, Draft EIS, FTA, UT, Draper Transit Corridor Project, To Improve Transportation Mobility and Connectivity for Residents and Commuters in the Project Study Area, Salt Lake County, UT, Comment Period Ends: 02/05/2010, Contact: Kristin Kenyon 720–963–3300.

EIS No. 20090435, Draft EIS, APHIS, 00, Glyphosate-Tolerant Alfalfa Events J101 and J163: Request for Nonregulated Status, Implementation, United States, Comment Period Ends: 02/16/2010, Contact: Cindy Eck 202–720–2600.

EIS No. 20090436, Draft EIS, USFS, OR, Canyon Fuels and Vegetation Management Project, Proposed Fuels and Vegetation Treatment to Reduce the Risk of Stand Loss Due to Overly Dense Stand Conditions, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR, Comment Period Ends: 02/01/2010, Contact: Marcy Anderson 541–416–6463.

EIS No. 20090437, Final EIS, USACE, NC, Western Wake Regional Wastewater Management Facilities, Proposed Construction of Regional Wastewater Pumping, Conveyance, Treatment, and Discharge Facilities to Serve the Towns of Apex, Cary, Holly Springs and Morrisville, Research Triangle Park, Wake County, NC, Wait Period Ends: 01/19/2010, Contact: Henry Wicker 910–251–4930.

Amended Notices

EIS No. 20090365, Draft EIS, USACE, CO, Moffat Collection System Project, to Provide High Quality Dependable, and Safe Drinking Water to Over 1.1 Million Customers in the City and County of Denver, Application for an Section 404 Permit, City and County Denver, Adams, Boulder, Jefferson and Grand Counties, CO, Comment Period Ends: 03/01/2010, Contact: Scott Franklin 303–979–4120, Revision to FR Notice Published 10/30/2009: Extending Comment Period from 01/28/2010 to 03/01/2010.

EIS No. 20090406, Final EIS, USFS, CA, Modoc National Forest Motorized Travel Management Plan, Implementation, National Forest Transportation System (NFTS), Modoc, Lassen and Siskiyou Counties, CA, Wait Period Ends: 02/01/2010, Contact: Kathleen Borovac 530–233–8754. Revisions to FR Notice 12/04/2009: Extending Comment Period from 01/04/2010 to 02/01/2010.

EIS No. 20090413, Final EIS, USFS, NV, Martin Basin Rangeland Project, Reauthorizing Grazing on Eight Existing Cattle and Horse Allotments: Bradshaw, Buffalo, Buttermilk, Granite Peak, Indian, Martin Basin, Rebel Creek, and West Side Flat Creek, Santa Rosa Ranger District, Humboldt-Toiyabe National Forest, NV, Wait Period Ends: 01/11/2010, Contact: Vernon Keller 775–355–5356. Revision to FR Notice 12/11/2009: Correction to Contact Person Phone Number from 775–355–5056 to 775–355–5356.

EIS No. 20090415, Final EIS, FHWA, MI, Detroit Intermodal Freight Terminal (DIFT) Project, Proposes Improvement to Intermodal Freight Terminals in Wayne and Oakland Counties, MI, Wait Period Ends: 01/29/2010, Contact: David T. Williams 517–702–1820. Revision to FR Notice Published 12/11/2009: Extending Comment Period from 01/11/2010 to 01/29/2010.

EIS No. 20090421, Draft EIS, NRC, WY, Moore Ranch In-Situ Uranium Recovery (ISR) Project, Proposal to Construct, Operate, Conduct Aquifer Restoration, and Decommission an In-Situ Recovery (ISR) Facility, NUREG–1910, Campbell County, WY, Comment Period Ends: 02/01/2010, Contact: Behram Shroff 301–415–0666. Revision to FR Notice Published 12/11/2009: Correction to Document Type from Draft Supplement to Draft.

EIS No. 20090423, Draft EIS, NRC, WY, Nichols Ranch In-Situ Uranium Recovery (ISR) Project, Proposal to Construct, Operate, Conduct Aquifer Restoration, and Decommission an In-Situ Recovery Uranium Milling Facility, Campbell and Johnson Counties, WY, Comment Period Ends: 02/01/2010, Contact: Irene Yu 301–415–1951. Revision to FR Notice Published 12/11/2009: Correction to Document Type from Draft Supplement to Draft.

EIS No. 20090425, Draft EIS, NRC, WY, Lost Creek In-Situ Uranium Recovery (ISR) Project, Proposal to Construct, Operate, Conduct Aquifer Restoration, and Decommission an In-Situ Recovery (ISR) Uranium Milling Facility, Sweetwater County, WY, Comment Period Ends: 02/01/2010, Contact: Alan B. Bjornsen 301–415–1195. Revision to FR Published 12/11/2009: Correction to Document Type Draft Supplement to Draft.

Dated: December 15, 2009.

Ken Mittelholtz,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–30124 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0192; FRL–8802–2]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has issued an experimental use permit (EUP) to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA, APHIS) for the use of Gonacon Immunocontraceptive Vaccine on feral horses in Theodore Roosevelt National Park in North Dakota. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: Autumn Metzger, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5314; e-mail address: *metzger.autumn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, 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 information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0192. 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.

II. Description of EUP

Registrant: U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA, APHIS) applied for an EUP for the use of Gonacon Immunocontraceptive Vaccine on feral horses on July 13, 2009.

56228-EUP-40. Registrant: USDA, APHIS, Environmental Services Unit 149, 4700 River Road, Riverdale, MD 20737. This EUP allows the use of 1.6 ml of the active ingredient Mammalian Gonadotropin Releasing Hormone (GnRH) delivered in the end use product GonaCon Immunocontraceptive Vaccine on 47,000 acres of Federally owned park land in Theodore Roosevelt National Park in North Dakota to evaluate the contraceptive efficacy on feral horses *(Equus cabalus)*.

III. Regulatory Conclusions

EPA issued the EUP as described in Unit II on October 13, 2009. The program is authorized only in the State of North Dakota. The EUP is effective from October 13, 2009 to October 13, 2014.

IV. Missing Data

There was no missing data.

V. Response to Comments

There were no comments.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 7, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–30125 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0364; FRL–8794–6]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any currently

registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before January 19, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0364, 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–2009–0364. 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.

FOR FURTHER INFORMATION CONTACT: Shaja B. Joyner, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *joyner.shaja@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. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

II. Registration Applications

EPA received the following applications to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *File Symbol*: 264–RNIL. *Applicant*: Bayer Crop Science, P.O. Box 12014, 2.T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*:

Fluopyram 500 SC. *Product Type*: Fungicide. *Active Ingredients*: Fluopyram at 11.3% and pyrimethanil at 33.8%. *PC Codes*: 080302 and 228201. *Proposed Classification*: 7 and 9 respectively for fluopyram and pyrimethanil. *Use*: Almond; bulb vegetables; grape; pistachio; pome fruit; potato and other tuberous and corm vegetables; small berries; stone fruit, except cherry; strawberry; and tomato.

2. *File Symbol*: 264–RNIU. *Applicant*: Bayer Crop Science, P.O. Box 12014, 2.T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: Fluopyram 400 SC. *Product Type*: Fungicide. *Active Ingredients*: Fluopyram at 17.4% and prothioconazole at 17.4%. *PC Codes*: 080302 and 113961. *Proposed Classification*: 7 and 3 respectively for fluopyram and prothioconazole. *Uses*: Dried shelled pea and bean subgroup, except soybean.

3. *File Symbol*: 264–RNON. *Applicant*: Bayer Crop Science, P.O. Box 12014, 2.T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: Fluopyram 500 SC. *Product Type*: Fungicide. *Active Ingredients*: Fluopyram at 21.4% and trifloxystrobin at 21.4%. *PC Codes*: 080302 and 129112. *Proposed Classification*: 7 and 11 respectively for fluopyram and trifloxystrobin. *Uses*: Almond; artichoke (globe); brassica leafy vegetable (head and stem subgroup); brassica leafy vegetable (leafy greens subgroup); carrot; citrus; cucurbit vegetables; fruiting vegetables; ginseng; grapes and small vine fruit (except fuzzy kiwifruit); grasses grown for seed; herbs and spices (except black pepper); hops; leafy green vegetables (except brassica); leafy petiole vegetables (except brassica); peanut; pecan; pistachio; pome fruit; potato and other root and tuberous corm vegetables; soybean; stone fruit; strawberry; sugarbeet; tree nuts; and wheat.

4. *File Symbol*: 264–RNOR. *Applicant*: Bayer Crop Science, P.O. Box 12014, 2.T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: Fluopyram 400 SC. *Product Type*: Fungicide. *Active Ingredients*: Fluopyram at 17.6% and tebuconazole at 17.6%. *PC Codes*: 080302 and 128997. *Proposed Classification*: 7 and 3 respectively for fluopyram and tebuconazole. *Uses*: Almond; barley; bulb vegetables; corn (sweet corn, field corn, field corn grown for seed, and popcorn); cucurbit vegetables; grape; grasses grown for seed (all grasses except cereals); hop; leafy brassica greens; okra; peanut; pecans; pistachio; pome fruit; soybean; stone fruit; sunflower; tree nuts; and wheat.

5. *File Symbol*: 264–RNTI. *Applicant*: Bayer Crop Science, P.O. Box 12014, 2.T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: Fluopyram 500 Suspension Concentrate (SC). *Product Type*: Fungicide. *Active Ingredient*: Fluopyram at 41.5%. *PC Code*: 080302. *Proposed Classification*: None. *Use*: Alfalfa, forage; alfalfa, hay; almond, hulls; apple, wet pomace; artichoke; banana; beet, sugar, roots; berry, lowgrowing, subgroup 13-07G; brassica, head and stem, subgroup 5A; brassica, leafy greens, subgroup 5B; bushberries, subgroup 13-07B; caneberries, subgroup 13-07A; cattle, fat; cattle, meat; cattle, meat byproducts, except liver; cattle, liver; citrus, oil; corn, sweet, kernel plus cob with husk removed; cotton, gin byproducts; cotton, undelinted seed; egg; fruit, citrus, group 10; fruit, pome, group 11; fruit, small, vine, climbing, except fuzzy kiwifruit, subgroup 13-07F; fruit, stone, group 12; goat, fat; goat, meat; goat, meat byproducts, except liver; goat, liver; grain, cereal, forage, fodder and straw, group 16, except rice; forage; grain, cereal, group 15, except rice and sweet corn; grape; grape, raisin; grass, forage, fodder and hay, group 17; forage; grass, forage, fodder and hay, group 17; hay; hay, straw and stover; herbs, subgroup 19A, fresh; herbs, subgroup 19A, dried; hop, dried cones; hog, fat; hog, meat; hog, meat byproducts, except liver; hog, liver; horse, fat; horse, meat; horse, meat byproducts, except liver; horse, liver; milk; nut, tree, group (including pistachio) 14; oilseed, group 20, except cotton; okra; onion, bulb, subgroup 3-07A; onion, green, subgroup 3-07B; ornamental; peanut; peanut, hay; pepper, non-bell; poultry, fat; poultry, meat; poultry, meat byproducts; potato, processed potato waste; sheep, fat; sheep, meat; sheep, meat byproducts, except liver; sheep, liver; soybean, aspirated fractions; soybean, forage; soybean, hay; soybean, hulls; soybean, seed; spices, except black pepper, subgroup 19B; strawberry; tomato; turf; vegetable, cucurbit, group 9; vegetable, foliage of legume, except soybean, subgroup 7A; vegetable, fruiting, except non-bell pepper, group 8; vegetable, leafy, except brassica, group 4; vegetable, leaves of root and tuber, group 2; vegetable, legume, edible podded, subgroup 6A; vegetable, legume, succulent shelled, subgroup 6B; vegetable, pea and bean, dried shelled (except soybean), subgroup 6C; vegetable, root and tuber, except sugarbeet, subgroup 1B; vegetable, tuberous and corm, subgroup 1C; and vines.

6. *File Symbol*: 264–RNTT. *Applicant*: Bayer Crop Science, P.O. Box 12014, 2.T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: Fluopyram Technical. *Product Type*: Fungicide. *Active Ingredient*: Fluopyram at 98.6%. *PC Code*: 080302. *Proposed Classification*: None. *Use*: Manufacturing use only.

7. *File Symbol*: 432–RUIL. *Applicant*: Bayer Environmental Science, P.O. Box 12014, 2.T.W. Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: Fluopyram 500 SC. *Product Type*: Fungicide. *Active Ingredient*: Fluopyram at 41.5%. *PC Code*: 080302. *Proposed Classification*: None. *Uses*: Turf and ornamentals.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 3, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–30203 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0815; FRL–8802–3]

Receipt of Petition Requesting EPA to Classify all Rodenticide Products Containing Strychnine as Restricted Use Pesticides; Opening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing for public comment a July 9, 2009 petition from the State FIFRA Issues Research and Evaluation Group (SFIREG), available in docket number EPA–HQ–OPP–2009–0815, requesting that the Agency classify all rodenticide products containing strychnine as Restricted Use Pesticides.

DATES: Comments must be received on or before March 18, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0815, 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–2009–0815. 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 of which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

William W. Jacobs, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6406; fax number: (703) 308–0029; e-mail address: *jacobs.bill@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: Various environmental groups, farmers, ranchers, foresters, State regulatory agencies, other interested Federal agencies, members of the public interested in the sale, distribution, or use of pesticides, registrants of strychnine alkaloid pesticide products, and other pesticide registrants and pesticide users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

II. Background

What Action is the Agency Taking?

EPA is providing an opportunity for public comment on a petition received from the State FIFRA Issues Research and Evaluation Group that asks the Agency ''to classify all strychnine-containing rodenticides as Restricted Use Pesticides (RUPs).''

EPA regulates pesticides under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Under FIFRA, EPA registers a pesticide after determining that the use of the pesticide will not cause ''unreasonable adverse effects'' to human health or the environment. This standard is a risk-benefit standard that takes into account social, economic, and environmental costs and benefits. Section 3(d)(1)(C) of FIFRA authorizes EPA to classify a product as a restricted use pesticide if the Agency finds that only through such classification could its use be permitted without unreasonable adverse effects on the environment.

Restricted use pesticides may only be sold to and applied by certified applicators or persons acting under the direct supervision of certified applicators. End-use pesticide products that are not classified as restricted use pesticides are considered to be unclassified. Products registered and labeled only for use in the manufacture of other pesticide products are not subject to requirements pertaining to classification.

Through a Federal regulation promulgated in 1978, (43 FR 5782-5791, February 9, 1978) ''dry baits, pellets and powder formulations'' containing strychnine compounds are classified as restricted use pesticides if:

1. The concentration of active ingredient claimed on the label exceeds 0.5%

2. The label permits applications that are not ''subsoil,'' and/or

3. The label includes ''uses calling for burrow builders.'' The same rule allows strychnine end-use ''dry baits, pellets and powder formulations'' limited to ''subsoil uses'' not involving burrow-builder applications to remain unclassified. Such products may be purchased and used by persons who are neither certified applicators nor supervised by certified applicators.

In 1983, EPA completed a Special Review of above-ground uses of strychnine alkaloid and strychnine sulfate products. In 1988, a U.S. District Court in Minnesota issued an injunction prohibiting the registration of above-ground uses of strychnine products. In 1989, the 1988 decision was reversed in part on appeal but was upheld on matters related to the Endangered Species Act. The injunction against above-ground uses of pesticides containing strychnine compounds was sustained and remains in effect. Also in 1989, EPA and various concerned parties reached a settlement agreement pursuant to the Special Review for strychnine products.

By the early 1990's, the registrations of many strychnine alkaloid products and all strychnine sulfate products had been canceled. The strychnine alkaloid products that remained registered at that time primarily included:

1. Restricted use products labeled for below-ground applications to control pocket gophers, including applications using burrow builders;

2. Unclassified end-use products labeled for manual below-ground applications to control pocket gophers; and

3. Manufacturing-use products.

In 1996, EPA issued a Reregistration Eligibility Decision (RED) document pertaining to strychnine. Labels for all currently registered strychnine products bear risk mitigation text developed through the reregistration process. All but one of the remaining strychnine products subject to the RED have been reregistered. All nine of the remaining unclassified strychnine end-use products have been reregistered.

Through a petition, SFIREG seeks to have all strychnine products classified as restricted use pesticides. Due to the regulatory exemption afforded to manufacturing use products, the SFIREG petition would directly affect only the currently unclassified products which are labeled for manual, below-ground applications to control various types of pocket gophers.

The petitioner reports that member States have noted incidents of misuse of strychnine products, including use to control ''black-tailed prairie dogs and other pests not found on the product labeling.'' Petitioner states that uses against prairie dogs typically consist of ''broadcast applications of bait products on the soil surface'' and thereby increase the likelihood of primary and secondary exposures to non-target species. Petitioner expresses concern that sales of unclassified strychnine products, including ''many products sold in small packages,'' make it difficult for State regulatory agencies to investigate misuse cases involving strychnine due to the lack of recordkeeping requirements for transactions involving unclassified products. Petitioner contends that classifying all strychnine products as restricted use pesticides would:

1. Provide tighter controls over the distribution, sale, and use of these products

2. Improve documentation of sales, facilitate investigations of misuse cases; and

3. Better mitigate risk to the environment.

For this Notice, EPA has posted petitioner's request in the public docket accompanying this topic at EPA–HQ–OPP–2009–0815. EPA is providing an opportunity for public comment and submission of additional information pertinent to this petition that commenters would like the Agency to consider as it develops a response to the petition. The Agency would find particularly useful information relating to misuse of strychnine products, including misuse by non-certified applicators and by, or under the direct supervision of, certified applicators. Commenters are asked to provide available information regarding the products involved, the incidence of misuse, and the environmental impacts that have or could reasonably have resulted from misuse.

List of Subjects

Environmental protection, pesticides, restricted use, rodenticides, strychnine.

Dated: December 10, 2009.

G. Jeffrey Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–30155 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0744; FRL–8802–7]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by January 19, 2010 for these registration for which the registrants have requested a waiver of the 180–day comment period, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than January 19, 2010. Comments must be received on or before January 19, 2010 for these registrations, where the 180–day comment period has been waived.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2009–0744, 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: Written Withdrawal Request, Attention: Barbara Briscoe, Pesticide Re-evaluation Division (7508P).

• *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–2009–0744. 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.

FOR FURTHER INFORMATION CONTACT:

Barbara Briscoe, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8177; e-mail address: *briscoe.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, 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 information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 194 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000088-00024	Hyponex Bug Spray for House Plants	Piperonyl Butoxide
000192-00183	Ortho House Plant Insect Killer	Resmethrin
000228-00195	Riverdale DP-4 Amine	2,4-DP
000228-00243	Riverdale Cattle Spray	Piperonyl Butoxide
000228-00245	Riverdale Insect Killer	Piperonyl Butoxide
000228-00246	Riverdale Home and Garden Insect Spray	Piperonyl Butoxide
000228-00247	Riverdale Pyrethrin Concentrate	Piperonyl Butoxide
000228-00250	Riverdale Patio & Yard Outdoor Fogger	Piperonyl Butoxide
000239-02421	Ortho Outdoor Insect Fogger	Resmethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000239-02429	Ortho Hi Power Indoor Insect Fogger	Piperonyl Butoxide
000239-02498	Ortho Rose & Flower Insect Killer	Piperonyl Butoxide
000239-02527	Ortho Pet Flea & Tick Spray	Piperonyl Butoxide
000239-02565	Ortho Pet Shampoo	Piperonyl Butoxide
000239-02566	Ortho Pet Flea & Tick Powder	Piperonyl Butoxide
000239-02567	Flea-B-Gon Carpet Dust	Piperonyl Butoxide
000239-02624	HI Power Indoor Insect Fogger Formula V	Piperonyl Butoxide
000239-02676	Flea-B-Gon Total Fogger	Permethrin
000239-02678	Ortho Ant Killer Spray	Permethrin
000478-00126	Real Kill Automatic Indoor Fogger II	Permethrin
000499-00339	Whitmire Wasp and Hornet Spray	Resmethrin
000499-00352	Wasp & Hornet Spray #3	Resmethrin
000499-00455	ULD BP-3000-R Resmethrin Concentrate	Resmethrin
000538-00177	Scotts Houseplant Insecticide	Pyrethrins
000538-00243	Yard & Garden Insect Control	Piperonyl Butoxide
000538-00244	Next Generation Crawling Insect Control	Piperonyl Butoxide
000538-00245	Next Generation Yard & Garden Concentrate Insect Control	Piperonyl Butoxide
000572-00316	Rockland Mill-Mist "S"	Resmethrin
000769-00317	Superior Oil 70	Aliphatic Solvents
000769-00682	SMCP SBP- 1382 Insecticide Spray 0.10%	Resmethrin
000769-00683	SMCP SBP-1382 ® Insecticide Spray 0.05	Resmethrin
000769-00684	SMCP SBP-1382 ® Insecticide Spray 0.25	Resmethrin
000769-00701	SMCP SBP-1382 Liquid Spray 0.25%	Resmethrin
000769-00702	24.3% SBP-1382-2 E.C.	Resmethrin
000769-00703	40% SBP-1382 Mosquito Adulticide ULV Oil Base Concentrate	Resmethrin
000769-00704	SMCP SBP-1382 ULV Insecticide	Resmethrin
000769-00710	SMCP Household Insect Spray	Resmethrin
000769-00805	Superior Point Two Fly Spray	Resmethrin
000769-00870	Greenhouse & Plantscape EC2 Resmethrin Insect Spray	Resmethrin
000769-00877	Platt Whitefly Spray for Indoor Plants and Outdoor Ornamentals	Resmethrin
000769-00882	Resmethrin Mosquito Concentrate 40	Resmethrin
000769-00884	Pratt Resmethrin 3 Insect Spray	Resmethrin
000769-00885	Pratt Wasp & Yellow Jacket Spray	Resmethrin
000769-00893	Pratt Plant Spray	Resmethrin
000769-00900	House & Yard Insect Spray	Resmethrin
000769-00938	Warner Enterprises Wasp & Hornet III	Resmethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000769-00939	Warner Enterprises Ornamental Insecticide Concentrate I	Resmethrin
000829-00075	SA 50 25% Malathion Wettable Spray Concentrate	Malathion
001021-00056	Pyrocide Intermediate 54	Piperonyl Butoxide
001021-00230	Pyrocide Intermediate 57	Piperonyl Butoxide
001021-00838	Clearmol Concentrate 6643	Piperonyl Butoxide
001021-00988	Pyrocide Intermediate 6878	Piperonyl Butoxide
001021-01091	Evergreen Emulsifiable 60-6	Piperonyl Butoxide
001021-01095	Pyrocide Intermediate 6982	Piperonyl Butoxide
001021-01126	D-Trans Intermediate 1860	Piperonyl Butoxide
001021-01517	Pyrocide Concentrate 7352	Piperonyl Butoxide
001021-01627	Evercide Intermediate 2531	MGK-264
001021-01646	Piperonyl Butoxide OS	Piperonyl Butoxide
001021-01654	ETOC Concentrate 2634	Piperonyl Butoxide
001021-01679	Multicide Pressurized Roach Spray 27341	MGK-264
001021-01681	Multicide Total Release Aerosol 2782	MGK-264
001021-01685	Multicide Total Release Aerosol 27372	MGK-264
001021-01695	Evercide Concentrate 2654	MGK-264
001021-01696	Evercide Carpet and Surface Spray 2655	MGK-264
001021-01697	Evercide Roach and Ant Spray 2622	MGK-264
001021-01705	Pyrocide Home & Garden Spray	Piperonyl Butoxide
001021-01786	Pyrocide Indoor/Outdoor Insect Killer 73525	Piperonyl Butoxide
001021-01792	Evercide Carpet and Surface Spray 28011	MGK-264
001021-01822	Turbocide Pest Control System with PYROCIDE 1-5	Piperonyl Butoxide
002217-00068	Pyrenone Multi-Purpose Knockout Spray	Piperonyl Butoxide
002217-00246	Pyrenone Dairy Cattle and Stock Spray	Piperonyl Butoxide
002217-00476	Horse Spray Ready to Use	Piperonyl Butoxide
002217-00497	Gordon's Institutional Mist Spray	Piperonyl Butoxide
002217-00520	Gordon's Malathion Contains 5 LBS Malathion Per Gallon	Malathion
002217-00523	Gordon's Institutional Area Spray	Piperonyl Butoxide
002217-00578	Pyrenone Multi-Purpose Knockout Spray	Piperonyl Butoxide
002217-00582	Gordon's Industrial Emulsifiable Concentrate Stable (1)	Piperonyl Butoxide
002217-00583	Gordon's Industrial Emulsifiable Concentrate Stable(2)	Piperonyl Butoxide
002217-00584	Gordon's Industrial Spray	Piperonyl Butoxide
002596-00137	Hartz One Spot Repellant for Dogs and Puppies	Permethrin
002596-00146	Hartz REF. 101	Permethrin
002724-00507	Speer Home & Garden Insect Spray with 25% SPB-1382	Resmethrin
002724-00509	Speer Insect Killer With .25% SBP-1382	Resmethrin

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
002724-00510	Speer Indoor-Outdoor Insect Spray with 35& SBP-1382	Resmethrin
002724-00515	Speer Yard & Patio Fogger	Resmethrin
002724-00516	Speer Flea Spray for Dogs & Cats	Resmethrin
002724-00520	Speer Food Plant Pressurized Insect Spray	Resmethrin
002724-00524	Speer Cedar Scented Moth Proofer	Resmethrin
002724-00525	Speer Aqueous Pressurized Spray Professional Strength	Resmethrin
002724-00526	Speer House & Garden Insect Spray	Resmethrin
002724-00528	Speer Aqueous Pressurized Spray	Resmethrin
002724-00534	Speer 2% Transparent Emulsion Concentrate	Resmethrin
002724-00535	Speer 0.35% Transparent Emulsion Spray	Resmethrin
002724-00546	Speer Wasp & Hornet Killer	Resmethrin
002724-00695	SBP/PY/PB Water-based Ready-to-use Liquid Spray	Resmethrin
002935-00418	Metaldehyde 4 Bait	Metaldehyde
003468-00009	Supreme Oil Insecticide	Aliphatic Solvents
004822-00122	Johnson Yardmaster Foam Insect Killer	Resmethrin
004822-00136	Raid Formula II Insect Killer	Resmethrin
004822-00139	Raid Household Flying Insect Killer I	Resmethrin
004822-00140	Raid Formula IV Flying Insect Killer	Resmethrin
004822-00141	Raid Flying Insect Killer Formula III	Resmethrin
004822-00162	Raid Household Flying Insect Killer Formula 2	Resmethrin
004822-00163	Raid House and Garden Bug Killer all Seasons Formula	Resmethrin
004822-00165	Raid House and Garden Bug Killer V	Resmethrin
004822-00181	Raid House and Garden Bug Killer Formula 8	Resmethrin
004822-00183	Raid Formula 5249 Multi-Purpose Bug Killer	Resmethrin
004822-00186	Raid Formula D39 Multi-Purpose Bug Killer	Resmethrin
004822-00187	Johnson Wax Raid Liquid Flying Insect Killer	Resmethrin
004822-00188	Raid Liquid Flying Insect Killer I	Resmethrin
004822-00214	Raid Gypsy Moth and Japanese Beetle Killer	Resmethrin
004822-00286	Raid Formula 6 Flying Insect Killer	Resmethrin
004822-00287	Raid Flying Insect Killer Formula 8	Resmethrin
004822-00288	Raid Flying Insect Killer Formula 7	Resmethrin
004822-00304	Raid Flying Insect Killer Formula 10	Resmethrin
004822-00363	Piperonyl Butoxide Technical for Manufacturing Purposes Only	Piperonyl Butoxide
005178-00009	Fish Mosquito Coils	Pyrethrins
005481-00035	Pyrenone Fly Spray	Pyrethrins
005481-00041	DDVP 1 Spray Insecticide Concentrate	Dichlorvos (DDVP)

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
005481-00064	Pyrethrin 101 Concentrate	Pyrethrins
005481-00201	DDVP 80% Fogging Concentrate	Dichlorvos (DDVP)
005481-00202	DDVP 50% Fogging Concentrate	Dichlorvos (DDVP)
005481-00203	DDVP 5 TM Fogging Concentrate	Dichlorvos (DDVP)
005481-00207	DDVP 15 Fogging Insect Control	Dichlorvos (DDVP)
005481-00208	DDVP 15% Spray Concentrate	Dichlorvos (DDVP)
005481-00340	Alco Bug Spray Pressurized	Pyrethrins
005887-00037	Black Leaf Dormant Spray	Aliphatic Solvents
005887-00101	Black Leaf Yard & Patio Fogger	Resmethrin
005887-00113	Roach & Ant Pressurized Spray	Resmethrin
005887-00114	Black Leaf House & Garden Pressurized Spray	Resmethrin
005887-00115	Black Leaf Fly & Mosquito Pressurized Spray	Resmethrin
005887-00117	Black Leaf Cockroach & Ant Killer	Resmethrin
005887-00119	Black Leaf Wasp & Hornet Pressurized Spray	Resmethrin
005887-00122	Black Leaf White Fly Pressurized Spray	Resmethrin
005887-00130	Black Leaf Cockroach & Ant Killer	Resmethrin
006218-00021	Summit Mushroom House Fogging Insecticide	Dichlorvos (DDVP)
006218-00057	Summit 5% DDVP	Dichlorvos (DDVP)
008329-00011	Malathion E-5	Malathion
008329-00014	Clarke ULV Mosquitocide 731	Resmethrin
008329-00028	Pyrethrins 3610-MO	Pyrethrins
008329-00029	ULV Mosquitocide 731 Plus	Resmethrin
008329-00038	Biomist 4 + 20 Spray	Piperonyl Butoxide
008329-00041	Biomist 12 + 60 ULV	Piperonyl Butoxide
008329-00052	Flak 10-10	Piperonyl Butoxide
008329-00053	Flak 50-50	Piperonyl Butoxide
008329-00054	Oblique	Resmethrin
008329-00055	Oblique III	Resmethrin
008329-00063	Biomist 2 + 2 ULV	Piperonyl Butoxide
008378-00059	Shaw's Permethrin 50 Lawn Insect Granules	Permethrin
008660-00054	Fogging Concentrate Pyrenone-Type	Piperonyl Butoxide
008660-00058	Pyrenone 20 New	Piperonyl Butoxide
008660-00077	Patterson's Greenup Organic Bug Dust	Piperonyl Butoxide
008660-00084	Vertagreen Indoor Plant Spray	Piperonyl Butoxide
008660-00119	Vertagreen Rose & Flower Insect Killer	Piperonyl Butoxide
008845-00057	Hot Shot Improved Fly and Mosquito Insect-Killer Formula II 5	MGK-264

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
008845-00103	Rid-A-Flea Shampoo	MGK-264
008845-00122	Hot Shot Roach and Ant Killer-Formula PRWB-1	Pyrethrins
008845-00123	Hot Shot Fogger V	Pyrethrins
009086-00008	Revenge Farm and Home Fly Bomb Insect Fogger	Pyrethrins
010900-00063	876 Institutional Insecticide	Resmethrin
019713-00302	Green Devil Wettable Powder	Malathion
019713-00359	Best 4 Servis Brand 25% Malathion Wettable Powder	Malathion
032970-00006	Pactor-Fume Up and Atem Water Based Insecticide	MGK-264
034704-00859	Takedown 50 WP Cotton Defoliant	Thidiazuron
039609-00001	Schultz House Plants & Gardens Insect Spray	Piperonyl Butoxide
042697-00033	Safer Soap and Pyrethrum Ready-To-Use	Pyrethrins
046515-00008	Super K-Gro Tomato & Vegetable insect Spray	Pyrethrins
046515-00009	Super K-Gro Rose & Floral Insect Killer	Piperonyl Butoxide
046515-00020	Super K-Gro Pet, Flea and Tick Spray	Piperonyl Butoxide
046515-00023	Super K-Gro Whitefly and Mealybug Insect Killer	Piperonyl Butoxide
046515-00027	Super K-Gro House Plant Insect Killer	Piperonyl Butoxide
046515-00029	Super K-Gro Whitefly & Mealybug Killer Spray	Piperonyl Butoxide
046515-00038	K-Rid Roach and Flea Fogger	MGK-264
046515-00039	K-Ant and Roach Killer	MGK-264
046515-00047	Flying Insect Killer 3	Piperonyl Butoxide
046515-00049	House & Garden Bug Killer	Piperonyl Butoxide
046515-00052	Roach & Flea Fogger	Piperonyl Butoxide
047000-00137	Selco Vapona Insecticide Fogging Solution	Dichlorvos (DDVP)
049585-00011	Super K-Gro Pyrenone Garden Dust	Piperonyl Butoxide
050932-00005	Concern Multi-Purpose Insect Killer Ready to Use	Pyrethrins
059144-00001	Malathion 50% Insect Spray	Malathion
070506-00197	Cuprofix MZ Disperss	Copper Sulfate
070627-00042	Johnson Wax Professional Total Release Fogger	Pyrethrins
070627-00043	Flea Killer IGR and Adulticide	Pyrethrins
070627-00052	Raid Commercial Insect Killer	Pyrethrins
072155-00064	Tetraperm (0.15-0.15-0.75) Yard and Patio Fogger	Piperonyl Butoxide
075395-00001	SK-Enspray 99	Aliphatic Solvents
075395-00002	SK-Enspray N	Aliphatic Solvents
075402-00002	Hilo Premises Spray	Pyrethrins
075402-00003	Aloe Care Flea & Tick Shampoo	Pyrethrins
083399-00005	SVP1	Permethrin
CA 990026	Temik Brand 15G Aldicarb Pesticide	Aldicarb

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
CO-990012	Banvel Herbicide-for Weed Control in Millet	Dicamba
CO-990013	Banvel Herbicide Aerial Applications	Dicamba
CO-990014	Banvel Herbicide, preharvest applications in wheat	Dicamba

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 30–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000088	Hyponex Corp. 14111 Scotts Lawn Road Marysville, OH 43041
000192	Value Garden Supply 9100 W. Bloomington Freeway, Suite 113 Bloomington, MN 55431
000228	Nufarm Americas, Inc. 150 Harvester Dr. Suite 200 Burr Ridge, IL 60527
000239	The Scotts Group D/B/A/ The Ortho Group P.O. BOX 190 Marysville, OH 43040
000478	Realex P.O.BOX 142642 St. Louis, MO 63114
000499	BASF Corporation 3568 Tree Ct Industrial Blvd St. Louis, MO 63114
000538	The Scotts Company 14111 Scotts Lawn Road Marysville, OH 43041
000572	Value Garden Supply 9100 W. Bloomington Freeway Suite 113 Bloomington, MN 55431
000769	Value Garden Supply 9100 W. Bloomington Freeway Suite 113 Bloomington, MN 55431
000829	Southern Agricultural Insecticides, Inc. P.O. Box 218 Palmetto, FL 34220
001021	MCLaughlin Gormley King Company 8810 Tenth Avenue North Minneapolis, MN 55427
002217	PBI/Gordon Corporation 1217 West 12TH Street P.O. BOX 14090 Kansas City, MO 64101
002596	Hartz Mountain Corporation 400 Plaza Drive Secaucus, NJ 07094

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
002724	Wellmark Mountain Corporation 1501 E. Woodfield Road, Suite 200 West Schaumburg, IL 60173
002935	Wilbur Ellis Company P.O BOX 1286 Fresno, CA 93715
003468	Schall Chemical Supply, LLC 120 N. Broadway Monte Vista, CO 81144
004822	S.C. Johnson & Son, Inc. 1525 Howe Street Racine, WI 53403
005178	Blood Protection Company, LTD Paul A. Keane & Associates P.O. Box 65436 Tucson, AZ 85728
005481	AMVAC Chemical Corporation 4695 MacArthur Court Suite 1250 Newport Beach, CA 92660
005887	Value Garden Supply 9100 W. Bloomington Freeway, Suite 113 Bloomington, MN 55431
006218	Summit Chemical Company Summit Responsible Solutions 235 South Kresson Street Baltimore, MD 21224
008329	Clark Mosquito Control Products, Inc. P.O. BOX 72197 Roselle, IL 60172
008378	Knox Fertilizer Company P.O. BOX 248 Knox, IN 46534
008660	United Industries, Corporation D/B/A Sylorr Plant Corporation. P.O. BOX 142642 ST LOUIS, MO 31140
008845	Spectrum Group Division of United Industries Corporation P.O. BOX 142642 St. Louis, MO 31140
009086	Roxide International, Inc. 5927 Paint Bank Road New Castle, VA 24127
010900	Sherman Williams 101 Prospect Avenue Cleveland, OH 44115
019713	Drexel Chemical Company 1700 Channel Avenue P.O. BOX 13327 Memphis, TN 38113
032970	American Cleaning Company 39-30 Review Avenue.. Long Island City, NY 11101

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
039609	Schultz Company 13260 Corporation Exchange Drive P.O. BOX 4406 Bridgeton, MO 63044
042697	Safer, Inc. 69 North Locust Street P.O. BOX 327 Lititz, PA 17543
046515	Celex Division of United Industries, Corporation P.O. BOX 14642 St. Louis, MO 63114
047000	Chem-Tech, Ltd 4515 Fleur Dr. #303 Des Moines, IA 50321
049585	Alljack, Division of United Industries, Corporation P.O. BOX 14642 St. Louis, MO 63114
050932	Woodstream Corporation 69 North Locust St. P.O. BOX 327 Lititz, PA 17543
070506	United Phosphorus 630 Freedom Business Center, Suite 402 King of Prussia, PA 19402
070627	Johnson Diversey, Inc. 8310 16TH ST. P.O. BOX 902 Sturtevant, WI 53177
072155	Bayer Advanced A Business Unit of Bayer Cropscience, LP 2 T.W. Alexander Dr., P.O. BOX 12014 Research Triangle Park, NC 27709
075395	SK E&P Company 1300 Post Oak Blvd, Suite 450 Houston, TX 77056
075402	Boss Pet Products, Inc. 1645 Rockside Road, Suite 200 Maple Heights, OH 44147
083399	Summit Vetpharm, LLC. 301 Route 17 North Rutherford, NJ 07070
CA 990026	California Pecan Growers Association P.O. Box 1142 Visalia, CA 93279
CO 990012	State of Colorado 700 Kipling Street, Suite 4000 Lakewood, CO 80215
CO 990013	State of Colorado 700 Kipling Street, Suite 4000 Lakewood, CO 80215
CO 990014	State of Colorado 700 Kipling Street, Suite 4000 Lakewood, CO 80215

III. 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. 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, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked on or before January 19, 2010. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due and to fulfill any applicable unsatisfied data requirements.

V. 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. EPA's existing stocks policy (56 FR 29362) provides that: ''If a registrant requests to voluntarily cancel a registration where the Agency has identified no particular risk concerns, the registrant has complied with all applicable conditions of reregistration, conditional registration, and data call ins, and the registration is not subject to a Registration Standard, Label Improvement Program, or reregistration decision, the Agency will generally permit a registrant to sell or distribute existing stocks for 1 year after the cancellation request was received. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted.''

Upon cancellation of the pesticides identified in Table 1, EPA anticipates allowing sale, distribution and use as described above. Exception to this general policy will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 10, 2009.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–30038 Filed 12–17–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 09–205; DA 09–2416]

Auction of Lower and Upper Paging Bands Licenses Scheduled for May 25, 2010; Comment Sought on Competitive Bidding Procedures for Auction 87

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of lower and upper paging bands licenses scheduled to commence on May 25, 2010 (Auction 87). This document also seeks comments on competitive bidding procedures for Auction 87.

DATES: Comments are due on or before December 21, 2009, and reply comments are due on or before January 7, 2010.

ADDRESSES: You may submit comments, identified by AU Docket No. 09–205, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- Through December 24, 2009, the Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- For filings on or after December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov or telephone:* 202–418–0530 or TTY: 202–418–0432.
- The Wireless Telecommunications Bureau requests that a copy of all comments and reply comments be submitted electronically to the following address: *auction87@fcc.gov.*
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Scott Mackoul at (202) 418–0660. For general auction questions: Roy Knowles or Barbara Sibert at (717) 338–2868; *Mobility Division:* For paging service rule questions: Michael Connelly (legal) or Melvin Spann (technical) at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 87 Comment Public Notice* released on November 30, 2009. The complete text of the *Auction 87 Comment Public Notice,* including Attachments A and B, and related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street,

SW., Room CY–A257, Washington, DC 20554. The *Auction 87 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 09–2416. The *Auction 87 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/87/* , or by using the search function for AU Docket No. 09–205 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces an auction of 9,603 paging licenses to commence on May 25, 2010, which has been designated Auction 87. These licenses consist of 7,752 licenses in the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz) and 1,851 licenses in the upper paging bands (929–931 MHz).

II. Licenses To Be Offered in Auction 87

2. Auction 87 will include licenses that remained unsold from a previous auction, licenses on which a winning bidder in a previous auction defaulted, and licenses for spectrum previously associated with licenses that cancelled or terminated. In a few cases, the available license does not cover the entire geographic area due to an excluded area or previous partitioning.

3. Attachment A of the *Auction 87 Comment Public Notice* provides a summary of the licenses available in Auction 87. Due to the large number of licenses in Auction 87, the complete list of licenses available for this auction will be provided in electronic format only, available as separate Attachment A files at *http://wireless.fcc.gov/auctions/87/* or through the Commission's duplicating contractor. Tables containing the block/frequency cross-reference list for the paging bands are included in Attachment B of the *Auction 87 Comment Public Notice.*

A. Incumbency Issues

4. There are pre-existing paging incumbent licenses. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. Adjacent geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee.

III. Bureau Seeks Comment on Auction Procedures

A. Auction Design

i. Auction Format

5. The Bureau proposes to auction all licenses included in Auction 87 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

ii. Anonymous Bidding

6. The Bureau proposes to conduct Auction 87 using certain procedures for limited information disclosure, also referred to as anonymous bidding. Specifically, the Bureau proposes to withhold, until after the close of bidding, public release of (1) Bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions. Under these proposed limited information procedures, the amount of every bid placed and whether a bid was withdrawn would be disclosed after the close of every round, but the identities of bidders placing specific bids or withdrawals and the net bid amounts would not be disclosed until after the close of the auction. Bidders, moreover, would have access to additional information about their own bids. After the close of bidding, bidders' license selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions would be made publicly available.

7. The Bureau seeks comment on the details regarding its proposal for implementation of anonymous bidding in Auction 87. The Bureau also seeks comment on alternatives to the use of anonymous bidding procedures for Auction 87. Because of the large number of licenses available in Auction 87 and the circumstances the Bureau anticipates for this paging auction, the potential gains to economic efficiency and competitiveness from using limited information procedures may not warrant the costs and burdens of those procedures in this case. The Bureau encourages parties to provide information about the benefits and costs of complying with limited information procedures as compared with the benefits and costs of alternative procedures that would provide for the disclosure of more information on bidder identities and interests in the auction. If commenters believe that the Bureau should not adopt procedures to limit the disclosure of certain bidder-specific information until after the auction, they should explain their reasoning.

B. Auction Structure

i. Round Structure

8. Auction 87 will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

9. The Commission will conduct Auction 87 over the Internet, and telephonic bidding will be available as well. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders.

10. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureau seeks comment on this proposal. Commenters may wish to address the role of the bidding schedule in managing the pace of the auction and the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

ii. Stopping Rule

11. For Auction 87, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. Thus,

unless the Bureau announces alternative stopping procedures, bidding will remain open on all licenses until bidding stops on every license. Consequently, it is not possible to determine in advance how long the auction will last.

12. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction 87: (1) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (2) declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close; and (3) keep the auction open even if no bidder submits any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

13. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising certain of these options, the Bureau is likely to attempt to change the pace of the auction by, for example, changing the number of bidding rounds per day and/or changing minimum acceptable bids. The Bureau proposes to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

iii. Information Relating to Auction Delay, Suspension, or Cancellation

14. For Auction 87, the Bureau proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau seeks comment on this proposal.

C. Auction Procedures

i. Upfront Payments and Bidding Eligibility

15. For Auction 87, the Bureau proposes to make the upfront payments equal to the minimum opening bids. The specific upfront payments for each license are set forth in the complete list of licenses available for Auction 87, available as separate Attachment A files at *http://wireless.fcc.gov/auctions/87/.* The Bureau seeks comment on this proposal.

16. The Bureau proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to the upfront payment listed for the license, on a bidding unit per dollar basis. The specific bidding units for each license are set forth in the complete list of licenses available for Auction 87, available as separate Attachment A files at *http://wireless.fcc.gov/auctions/87/.* The number of bidding units for a given license is fixed and does not change during the auction as prices rise. A bidder's upfront payment is not attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses it selected on its short-form application (FCC Form 175) as long as the total number of bidding units associated with those licenses does not exceed its current eligibility.

17. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

18. The Bureau seeks comment on these proposals.

ii. Activity Rule

19. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

20. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes to advance the auction to the next stage by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureau seeks comment on these proposals.

21. The Bureau proposes the following activity requirements, while noting again that the Bureau retains the discretion to change stages unilaterally by announcement during the auction. In each round of the first stage of the auction (Stage One), a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths ($5/4$). In each round of the second stage (Stage Two), a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths ($20/19$).

22. Under this proposal, the Bureau would retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent proposed herein. If the Bureau exercised this discretion, it would alert bidders by announcement in the FCC Auction System.

iii. Activity Rule Waivers and Reducing Eligibility

23. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to particular licenses. Activity rule waivers can be either proactive or automatic and are principally a mechanism for bidders to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round. The *Auction 87 Comment Public Notice* provides additional, more detailed information on how activity rule waivers operate.

24. The Bureau proposes that each bidder in Auction 87 be provided with three activity rule waivers that may be used as set forth above at the bidder's discretion during the course of the auction. The Bureau seeks comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

25. The Bureau proposes to establish minimum opening bid amounts for Auction 87. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureau does not propose a separate reserve price for the licenses to be offered in Auction 87.

26. For previous auctions of paging licenses (Auctions 40 and 48), the Commission set minimum opening bid amounts based on the winning bid amounts from a previous auction for paging licenses in the same area. The results of these calculations were subject to a minimum amount—e.g., a floor of $500 in Auction 48. In Auction 48, a large proportion of the licenses won were won at or near the minimum opening bid amount. Given the history of these licenses, the Bureau proposes to set the minimum opening bid for each license available in Auction 87 at $500.

27. The Bureau seeks comment on this proposal. If commenters believe that these minimum opening bid amounts will deter substantial numbers of bidders from placing bids on licenses, or are not reasonable amounts, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency within these spectrum bands, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the licenses being auctioned. The Bureau has not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and has instead proposed a formula that is more easily administered, and that is intended to reflect overall incumbency levels. The Bureau seeks comment on this approach and on whether the public interest would be served by having no minimum opening bid amount or reserve price.

v. Bid Amounts

28. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license using one or more pre-defined bid amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid on the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount will be a certain percentage higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

29. For Auction 87, the Bureau proposes to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a license will be approximately 10 percent greater than the provisionally winning bid amount for the license.

30. Any additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions.

31. The Bureau seeks comment on whether to start with eight additional bid amounts (for a total of nine bid amounts), or with fewer or no additional bid amounts, in the event that anonymous bidding is implemented for Auction 87. In particular, commenters should address the issue of additional bid amounts in light of particular circumstances of Auction 87, including the nature of the license inventory. If the Bureau allows additional bid amounts, it proposes to use a bid increment percentage of 5 percent. If the Bureau does not adopt anonymous bidding procedures for Auction 87, the Bureau proposes to start with only one bid amount per license (the minimum acceptable bid amount and no additional bid amounts).

32. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to make such changes on a license-by-license basis.

33. The Bureau seeks comment on the above proposals. Commenters may wish to address the role of the minimum

acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirements, or bid amounts, or by using other means.

vi. Provisionally Winning Bids

34. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (i.e., tied bids), the Bureau will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

35. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal

36. For Auction 87, the Bureau proposes and seeks comment on the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively undo any of its bids placed within that round. Once a round closes, a bidder may no longer remove a bid.

viii. Bid Withdrawal

37. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules.

38. For Auction 87, the Bureau proposes to limit each bidder to withdrawing provisionally winning bids in only one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals may be used will be at the bidder's discretion, and there is no limit on the number of provisionally winning bids that may be withdrawn during that round. Withdrawals must be in accordance with the Commission's rules, including the bid withdrawal payment provisions specified in 47 CFR 1.2104(g). The Bureau seeks comment on these bid withdrawal procedures. If commenters believe that each bidder should be allowed to withdraw provisionally winning bids in more than one round during the course of the auction, or should not be permitted to withdraw any bids, they should state how many bid withdrawal rounds they seek and explain what specific factors lead them to that conclusion.

D. Post-Auction Procedures

i. Establishing the Interim Withdrawal Payment Percentage

39. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). If a bid is withdrawn and no subsequent higher bid is placed and/or the license is not won in the same auction, the final withdrawal payment cannot be calculated until after the close of a subsequent auction in which a higher bid for the license (or the equivalent to the license) is placed or the license is won. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. 47 CFR 1.2104(g)(1) of the Commission rules requires that the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment be between three percent and twenty percent and that it be set in advance of the auction.

40. The Commission has determined that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission has noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate the licenses being offered in the auction, such as when few licenses are offered that are on adjacent frequencies or in adjacent areas, or when there are few synergies to be captured by combining licenses.

41. With respect to the licenses being offered in Auction 87, the service rules permit a variety of fixed, mobile, and paging services, though the opportunities for combining licenses on adjacent frequencies or in adjacent areas are more limited than has been the case in previous auctions of paging licenses. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with the Bureau's interest in deterring undesirable strategic use of withdrawals, the Bureau proposes a percentage below the maximum twenty percent permitted under the current rules but above the three percent previously provided by the Commission's rules. Specifically, the Bureau proposes to establish an interim bid withdrawal payment of ten percent of the withdrawn bid for this auction. The Bureau seeks comment on this proposal.

ii. Establishing the Additional Default Payment Percentage

42. Any winning bidder that, after the close of an auction, defaults—by, for example, failing to remit the required down payment within the prescribed period of time, failing to submit a timely long-form application, or failing to make full payment—or is otherwise disqualified is liable for a default payment under 47 CFR 1.2104(g)(2) of the Commission's rules. This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

43. For Auction 87, the Bureau proposes to establish an additional default payment of ten percent. As previously noted by the Commission, defaults weaken the integrity of the auction process and impede the deployment of service to the public.

Given the nature of the service and the inventory of the licenses being offered in Auction 87, the Bureau does not believe the detrimental effects of any defaults in Auction 87 are likely to be unusually great. The Bureau seeks comment on this proposal.

IV. Commission *Ex Parte* Rules

44. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E9–30164 Filed 12–17–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Schedule Change To Open Commission Meeting, December 16, 2009

Date: December 14, 2009.

Please note that the time for the Federal Communications Commission Open Meeting is rescheduled from 10:00 a.m. to 11:00 a.m.

As stated in the Commission's Notice of December 9, 2009, the meeting will be held on Wednesday, December 16, 2009 in Room TW–C305, at 445 12th Street, S.W., Washington, D.C. and will feature a presentation on the status of the National Broadband Plan.

The prompt and orderly conduct of the Commission's business requires this change and no earlier announcement was practicable.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–30268 Filed 12–16–09; 4:15 pm]

BILLING CODE 6712–01–S

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 January 4, 2010.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. James A. Jorgenson; Jorgenson Holding Company; the Karen Jorgenson Trust (Karen Neidhardt and James A. Jorgenson, Trustees); and Leonard M. Jorgenson, all of Kenmare, North Dakota, acting in concert; to retain voting shares of Bozeman Bancorp, Inc., and thereby indirectly retain votings shares of the Bank of Bozeman, both of Bozeman, Montana.

Board of Governors of the Federal Reserve System, December 14, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30074 Filed 12–17–09; 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 January 11, 2010.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. OSK, Inc., Edina, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Texico Bancshares Corporation, and thereby indirectly acquire voting shares of Texico State Bank, both of Texico, Illinois.

Board of Governors of the Federal Reserve System, December 14, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30075 Filed 12–17–09; 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 January 14, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. GFP Financial Services Company, Tulsa, Oklahoma; to become a bank holding company by acquiring 65.04 percent of the voting shares of First Pryor Bancorp, Inc., and First Pryority Bank, both in Pryor, Oklahoma.

Board of Governors of the Federal Reserve System, December 15, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–30100 Filed 12–17–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–3070, CMS–576/576A, CMS–416, CMS–10028 and CMS–2744, CMS–10088, CMS–R–142, CMS–10197 and CMS–10304]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Intermediate Care Facility (ICF) for the Mentally Retarded (MR) or Persons with Related Conditions Survey Report Form and Supporting Regulations at 42 CFR 442.30, 483.410, 483.420, 483.440, 483.450 and 483.460; *Use:* This survey form is needed to ensure ICF/MR provider and client characteristics are available and updated annually for the federal government's Online Survey Certification and Reporting (OSCAR) system. It is required for the provider to fill out at the time of the annual recertification or initial certification survey conducted by the State Medicaid agency. The team leader for the state survey team must review and approve the completed form before completion of the survey. The State Medicaid survey agency is responsible for transferring the 3070 information into OSCAR. *Form Number:* CMS–3070 (OMB#: 0938–0062); *Frequency:* Reporting—Yearly; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 6,437; *Total Annual Responses:* 6,437; *Total Annual Hours:* 19,311. (For policy questions regarding this collection contact Kelley Tinsley at 410–786–6664. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization's (OPO's) Health Insurance Benefits Agreement and Supporting Regulations at 42 CFR 486.301–486.348; *Use:* The information provided on this form serves as a basis for continuing the agreements with CMS and the 580 OPOs for participation in the Medicare and Medicaid programs for reimbursement of service. *Form Number:* CMS–576/576A (OMB#: 0938–0512); *Frequency:* Reporting—Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 58; *Total Annual Responses:* 58; *Total Annual Hours:* 116. (For policy questions regarding this collection contact Michele Walton at 410–786–3353. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services Participation Report; *Form Number:* CMS–416 (OMB#: 0938–0354); *Use:* States are required to submit an annual report on the provision of EPSDT services pursuant to section 1902(a)(43)(D) of the Social Security Act. These reports provide CMS with data necessary to assess the effectiveness of State EPSDT programs, to determine a State's results in achieving its participation goal and to respond to inquiries. Respondents are State Medicaid Agencies. The data is due April 1 of every year so States need to have the form and instructions as soon as possible in order to report timely. *Frequency:* Yearly; *Affected Public:* State, Tribal and Local governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 504. (For policy questions regarding this collection contact Cindy Ruff at 410–786–5916. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* State Health Insurance Assistance Program (SHIP) Client Contact Form, Public and Media Form, and Resource Report Form; *Form Number:* CMS–10028 (OMB#: 0938–0850); *Use:* The current Client Contact form, Public and Media Activity Report form, and Resource Report have been used to collect data to evaluate program effectiveness and improvement. In addition, the 2007–2009 State Health Insurance Program (SHIP) Performance Assessment Workgroup (comprised of SHIP Directors and representatives from external organizations such as the Administration on Aging), in a report to CMS, recommended that changes be made to the forms in order to enhance the ability to measure performance and program evaluation for each SHIP; add additional data collection elements as requested by Congress and SHIPs (Limited English Proficiency and Dual Mentally Disabled); and reduce the burden of data submission by counselor as a result of the ability to pre-populate certain data cells. The information collected is used to fulfill the reporting requirements described in Section 4360(f) of OBRA 1990. Also, the data will be accumulated and analyzed to

measure SHIP performance in order to determine whether and to what extent the SHIPs have met the goals of improved CMS customer service to beneficiaries and better understanding by beneficiaries of their health insurance options. Further, the information will be used in the administration of the grants, to measure performance and appropriate use of the funds by the state grantees, to identify gaps in services and technical support needed by SHIPs, and to identify and share best practices. *Frequency:* Yearly; *Affected Public:* State, Tribal and Local governments; *Number of Respondents:* 20,778; *Total Annual Responses:* 1,672,454; *Total Annual Hours:* 139,475. (For policy questions regarding this collection contact Barbara Childers at 410–786–7610. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Medical Information Facility Survey; *Form Number:* CMS–2744 (OMB#: 0938–0447); *Use:* The End Stage Renal Disease (ESRD) Medical Information Facility Survey form (CMS–2744) is completed annually by Medicare-approved providers of dialysis and transplant services. The CMS–2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients. The information is used to assess and evaluate the local, regional and national levels of medical and social impact of ESRD care and is used extensively by researchers and suppliers of services for trend analysis. The information is available on the CMS Dialysis Facility Compare Web site and will enable patients to make informed decisions about their care by comparing dialysis facilities in their area. *Frequency:* Yearly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 5,465; *Total Annual Responses:* 5,465; *Total Annual Hours:* 43,720. (For policy questions regarding this collection contact Connie Cole at 410–786–0257. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notification of Fiscal Intermediaries and CMS of co-located Medicare providers and Supporting Regulations in 42 CFR 412.22 and 412.533; *Use:* Many long-term care hospitals (LTCHs) are co-located with other Medicare providers (acute care hospitals, IRFs, SNFs, psychiatric facilities), which leads to potential gaming of the Medicare system based on patient shifting. CMS is requiring LTCHs to notify fiscal intermediaries K (FIs), Medicare Administrative Contractors (MACs) and CMS of co-located providers and establish policies to limit payment abuse that will be based on FIs tracking patient movement among these co-located providers. *Form Number:* CMS–10088 (OMB#: 0938–0897); *Frequency:* Occasionally; *Affected Public:* Private Sector, Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 25; *Total Annual Responses:* 25; *Total Annual Hours:* 6.25. (For policy questions regarding this collection contact Judith Richter at 410–786–2590. For all other issues call 410–786–1326.)

7. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Examination and Treatment for Emergency Medical Conditions and Women in Labor (EMTALA), 42 CFR 482.12, 488.18, 489.20, and 489.24; *Use:* This collection contains the requirements for hospitals in effort to prevent them from inappropriately transferring individuals with emergency medical conditions, as mandated by Congress. CMS uses this information to help assure compliance with this mandate. This information is not contained elsewhere in regulations. *Form Number:* CMS–R–142 (OMB#: 0938–0667); *Frequency:* Daily; *Affected Public:* Individuals or households; Private Sector; *Number of Respondents:* 6,149; *Total Annual Responses:* 6,149; *Total Annual Hours:* 1. (For policy questions regarding this collection contact Renate Rockwell at 410–786–4645. For all other issues call 410–786–1326.)

8. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Evaluation of the Medicare National Competitive Bidding Program for DME; *Use:* Data collection materials consisting of beneficiary surveys and interview/discussion group guides are necessary to conduct the congressionally mandated evaluation of the Medicare National Competitive Bidding Program. Medicare Modernization (MMA) Section 303(d) requires a Report to Congress on the program, covering program savings, reductions in cost sharing, impacts on access to and quality of affected goods and services, and beneficiary satisfaction. This project's purpose is to provide information for this Report to Congress. Due to substantial legislative and regulatory delays in program implementation, the Report to Congress in 2011 will be released just as the program is being implemented, and before the evaluation is complete. This project will continue after the Report to Congress, to evaluate the impact of the program on beneficiaries, on Medicare costs, and on changes in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) market. *Form Number:* CMS–10197 (OMB#: 0938–1015); *Frequency:* Occasionally; *Affected Public:* Individuals or households, Private Sector, Business or other for-profits, not-for-profit institutions, and Federal Government; *Number of Respondents:* 8,466; *Total Annual Responses:* 8,466; *Total Annual Hours:* 4,338. (For policy questions regarding this collection contact Ann Meadow at 410–786–6602. For all other issues call 410–786–1326.)

9. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Information Collection Requirements and Supporting Information for Chronic Kidney Disease Surveys under the 9th Scope of Work; *Form Number:* CMS–10304 (OMB#: 0938–New); *Use:* The Centers for Medicare & Medicaid Services (CMS) and the U.S. Department of Health and Human Services (DHHS) are requesting OMB clearance for the Chronic Kidney Disease (CKD) Partner Survey and the Chronic Kidney Disease (CKD) Provider Survey. The Prevention CKD Theme is a component of the Prevention Theme of the Quality Improvement Organization (QIO) Program's 9th Scope of Work (SOW). The statutory authority for this scope of work is found in Part B of Title XI of the Social Security Act (the Act) as amended by the Peer Review Improvement Act of 1982. The Act established the Utilization and Quality Control Peer Review Organization Program, now known as the Quality Improvement Organization (QIO) Program.

The goal of the Prevention CKD Theme is to detect the incidence, decrease the progression of CKD, and improve care among Medicare beneficiaries through provider adoption of timely and effective quality of care interventions; participation in quality incentive initiatives; beneficiary education; and key linkages and collaborations for system change at the state and local level. In addition to improving the quality of care for the elderly and frail-elderly, this Theme aims to reduce the rate of Medicare entitlement by disability through the delay and prevention of end-stage renal disease (ESRD); thus resulting in higher

quality care and significant savings to the Medicare Trust Fund.

The CKD Partner Survey constitutes a new information collection to be used by CMS to obtain information on how QIO collaboration with partners facilitates systems change within the QIO's respective state. The CKD Partner Survey will be a census administered to 350 collaborative partners in the 9th SOW. The CKD Partner Survey will be administered via telephone. Responses will be entered into a pre-programmed Computer-Assisted Telephone Interviewing (CATI) interface. The results of the survey shall be used for inpatient quality indicators (IQI) by the QIO. CMS will also use the results to assess how partner organizations and their perspective of the QIO's role are implementing system change.

Similarly, the CKD Provider Survey constitutes a new information collection to be used by CMS to obtain information on how QIO collaboration with physician practices facilitates systems change within the QIO's respective state. The CKD Provider Survey will be administered via telephone and the Web. Responses collected by phone will be entered into a pre-programmed Computer-Assisted Telephone Interviewing (CATI) interface. Responses collected by Web will be housed on a secure server and database. The results of the survey shall be used for inpatient quality indicators (IQI) by the QIO. CMS will also use the results to assess how physicians' practices and their perspective of the QIO's role are implementing system change. *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and Not-for profit institutions; *Number of Respondents:* 1,350; *Total Annual Responses:* 1,350; *Total Annual Hours:* 337.5. (For policy questions regarding this collection contact Robert Kambic at 410–786–1515. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *February 16, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 11, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–30176 Filed 12–17–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10299, CMS–10300 and CMS–10294]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* State Plan Amendment Template for the Option to Cover Certain Children and Pregnant Women Lawfully residing in U.S.; *Use:* This new option for State Medicaid and Children Health Insurance Programs (CHIP) was provided by section 214 of the Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111–3, which amends section 1902 of the Social Security Act. To select this option, a State Medicaid or CHIP agency will complete a template page and submit it for approval as part of their State Plan. *Form Number:* CMS–10299 (OMB#: 0938–NEW); *Frequency:* Reporting—Once and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 51. (For policy questions regarding this collection contact Bob Tomlinson at 410–786–5907. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* State Plan Amendment Templates for Additional State Plan Option for Providing Premium Assistance under Title XIX and XXI; *Use:* Section 301 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3, adds Section 2105(c)(10) of the Social Security Act effective April 1, 2009, to offer States a new option to provide premium assistance subsidies to enroll targeted low-income individuals under age 19, and their parents in qualified employer-sponsored coverage. To elect this option, a State Children's Health Insurance Program agency will complete the template pages and submit it for approval as part of a State plan amendment. *Form Number:* CMS–10300 (OMB#: 0938–New); *Frequency:* Reporting—Once and On occasion; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 51; *Total Annual Responses:* 51; *Total Annual Hours:* 255. (For policy questions regarding this collection contact Stacey Green at 410–786–6102. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Program Evaluation of the Eighth and Ninth Scope of Work Quality Improvement Organization Program; *Use:* The statutory authority for the Quality Improvement Organization (QIO) Program is found in Part B of Title XI of the Social Security Act, as amended by the Peer Review Improvement Act of 1982. The Social Security Act established the Utilization and Quality Control Peer Review Organization Program, now known as the QIO Program. The statutory mission of the

QIO Program, as set forth in Title XVIII—Health Insurance for the Aged and Disabled, Section 1862(g) of the Social Security Act—is to improve the effectiveness, efficiency, economy, and quality of services delivered to Medicare beneficiaries. The quality strategies of the Medicare QIO Program are carried out by specific QIO contractors working with health care providers in their state, territory, or the District of Columbia. The QIO contract contains a number of quality improvement initiatives that are authorized by various provisions in the Act. As a general matter, Section 1862(g) of the Act mandates that the secretary enter into contracts with QIOs for the purpose of determining that Medicare services are reasonable and medically necessary and for the purposes of promoting the effective, efficient, and economical delivery of health care services and of promoting the quality of the type of services for which payment may be made under Medicare. CMS interprets the term ''promoting the quality of services'' to involve more than QIOs reviewing care on a case-by-case basis, but to include a broad range of proactive initiatives that will promote higher quality. CMS has, for example, included in the SOW tasks in which the QIO will provide technical assistance to Medicare-participating providers and practitioners in order to help them improve the quality of the care they furnish to Medicare beneficiaries.

Additional authority for these activities appears in Section 1154(a)(8) of the Act, which requires that QIOs perform such duties and functions, assume such responsibilities, and comply with such other requirements as may be required by the Medicare statute. CMS regards survey activities as appropriate if they will directly benefit Medicare beneficiaries. In addition, Section 1154(a)(10) of the Act specifically requires that the QIOs ''coordinate activities, including information exchanges, which are consistent with economical and efficient operation of programs among appropriate public and private agencies or organizations, including other public or private review organizations as may be appropriate.'' CMS regards this as specific authority for QIOs to coordinate and operate a broad range of collaborative and community activities among private and public entities, as long as the predicted outcome will directly benefit the Medicare program.

The purpose of the study is to design and conduct an analysis evaluating the impact on national and regional health care processes and outcomes of the Ninth Scope of Work QIO Program. The QIO Program is national in scope and scale and affects the quality of healthcare of 43 million elderly and disabled Americans. CMS will conduct an impact and process analysis using data from multiple sources: (1) Primary data collected via in-depth interviews, focus groups, and surveys of QIOs, health care providers, and other stakeholders; (2) secondary data reported by QIOs through CMS systems; and (3) CMS administrative data. The findings will be presented in a final report as well as in other documents and reports suitable for publication in peer-review journals. This request relates to the following data collections: (1) Survey of QIO directors and theme leaders; (2) Survey of hospital QI directors and nursing home administrators; (3) focus groups with Medicare beneficiaries; and (4) in-person and telephone discussions with QIO staff, partner organizations, health care providers, and community health leaders. *Form Number:* CMS–10294 (OMB# 0938–New); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits, and Medicare beneficiaries; *Number of Respondents:* 3,343; *Total Annual Responses:* 3,343; *Total Annual Hours:* 1,707. (For policy questions regarding this collection contact Robert Kambic at 410–786–1515. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *January 19, 2010.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, e-mail: *OIRA_submission@omb.eop.gov.*

Dated: December 11, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–30143 Filed 12–17–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Information Collection: Indian Health Service Contract Health Services Report

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires a 30-day advance opportunity for public comment on the proposed information collection project, Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

The IHS received no comments in response to the 60-day **Federal Register** notice 74 FR 47801 published on September 17, 2009. The purpose of this notice is to allow an additional 30 days for public comment to be submitted directly to OMB.

Proposed Collection

Title: 0917–0002, ''Indian Health Service Contract Health Services Report.'' *Type of Information Collection Request:* Three year renewal, with change of currently approved information collection, 0917–0002, ''Indian Health Service Contract Health Services Report.'' *Form Number:* IHS 843–1A. Reporting formats are contained in an IHS Contract Health Services Manual Exhibit and IHS Web site. *Need and Use of Information Collection:* The IHS Contract Health Services Program needs this information to certify that the health care services requested and authorized by the IHS have been performed by the Contract Health Services provider(s); to have providers validate services provided; to process payments for health care services performed by such providers; and to serve as a legal document for health and medical care authorized by IHS and rendered by health care providers under contract with the IHS. *Affected Public:* Patients, health and medical care providers or Tribal Governments. *Type of Respondents:* Health and medical care providers.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Annual number of responses, Average burden

hour per response, and Total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response*	Total annual burden hours
IHS–843–1A	7,424	51	378,624	0.05 (3 mins)	18,931
IDS**	15,157	1	15,157	0.05 (3 mins)	758
Total	22,581				19,689

*For ease of understanding, burden hours are also provided in actual minutes.
**Inpatient Discharge Summary (IDS)

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (this is the amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Attention: Desk Officer for IHS, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503.

Send Comments and Requests for Further Information: To request more information on the proposed collection or to obtain a copy of the data collection instrument and/or instructions, contact: Ms. Betty Gould, Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852, call non-toll free (301) 443–7899, send via facsimile to (301) 443–9879, or send your e-mail requests, comments, and return address to: *Betty.Gould@ihs.gov*.

Comment Due Date: Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Dated: December 11, 2009.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. E9–30115 Filed 12–17–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Mentoring Children of Prisoners Data Collection Process (MCPDCP).

OMB No.: 0970–0266.

Description: Information from the Mentoring Children of Prisoners Data Collection Process is necessary for the Federal agency's reporting and planning under the Government Performance and Results Act and to support evaluation requirements in the statute. The data will be used for accountability monitoring, management improvement, and research. Acquisition of the data ensures that the Federal agency knows if Grantees are meeting the targets (number of children being mentored) recorded in the grant application as required by the statute, and that mentoring activities are faithful to characteristics established by research as essential to success. The data also support grantees as they carry out ongoing responsibilities, maintain program service and manage information for internal uses.

Respondents: Recipients of grants from the HHS/ACF/Family and Youth Services Bureau to operate programs to provide mentoring for children of prisoners.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
MCP Data Collection Process (MCPDCP)	150	4	12	7,200

Estimated Total Annual Burden Hours: 7,200.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 15, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–30092 Filed 12–17–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: New Runaway and Homeless Youth, Management Information System (NEORHYMIS).

OMB No.: 0970–0123.

Description: The Runaway and Homeless Youth Act, as amended by Public Law 106–71 (42 U.S.C. 5701 *et seq.*), mandates that the Department of Health and Human Services (HHS) report regularly to Congress on the status of HHS-funded programs serving runaway and homeless youth. Such reporting is similarly mandated by the Government Performance and Results Act. Organizations funded under the Runaway and Homeless Youth program are required by statute (42 U.S.C. 5712, 42 U.S.C. 5714–2) to meet certain data collection and reporting requirements. These requirements include maintenance of client statistical records on the number and the characteristics of the runaway and homeless youth, and youth at risk of family separation, who participate in the project, and the services provided to such youth by the project.

Respondents: Public and private, community-based nonprofit, and faith-based organizations receiving HHS funds for services to runaway and homeless youth.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Profile	536	153	0.25	20,502
Street Outreach Report	141	4,211	0.02	11,875.02
Brief Contacts	536	305	0.15	24,522
Turnaways	536	13	0.15	1,045.20
Data Transfer	536	2	0.50	536

Estimated Total Annual Burden Hours: 58,480.22.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 15, 2009.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. E9–30091 Filed 12–17–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2311–NC]

Medicaid Program and Children's Health Insurance Program; Model of Interstate Coordinated Enrollment and Coverage Process for Low-Income Children

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

ACTION: Notice with comment.

SUMMARY: This notice requests comments to assist in the development of a model process for the coordination of enrollment, retention, and coverage for low-income Medicaid and Children's Health Insurance Program eligible children as required under the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009. CHIPRA requires this model process to be developed by August 4, 2010 and the Secretary is required to submit a Report to Congress describing additional steps or authority needed to make further improvements to coordinate the enrollment, retention, and coverage under CHIP and Medicaid of low-income children who frequently change their State of residence.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on January 19, 2010.

ADDRESSES: In commenting, please refer to file code CMS–2311–NC. 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–2311–NC, P.O. Box 8010, Baltimore, MD 21244–8010.

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–2311–NC, 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: Wanda Pigatt-Canty, (410) 786–6177. Mary Corddry, (410) 786–6618.

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

Section 213 ''Model of Interstate Coordinated Enrollment and Coverage Process'' of the Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 requires the Secretary of Health and Human Services (HHS), in consultation with State Medicaid and Children's Health Insurance Program (CHIP) directors and organizations representing program beneficiaries, to develop a model process by August 4, 2010, that assures the continuity of coverage for low-income children under Medicaid and CHIP. The model process will be designed for the coordination of enrollment, retention, and coverage for children under the Medicaid and CHIP programs, who, because of migration of families, emergency evacuations, natural, or other disasters, public health emergencies, educational needs, or otherwise, frequently change their State of residence or are temporarily located outside their State of residence. American Indian and Alaska Native children who need care while attending boarding schools or need culturally appropriate care available only in a State where they do not reside are a key example of this population.

CHIPRA requires the Secretary, after developing a model process, to submit a Report to Congress that would describe additional steps or authority needed to make further improvements to coordinate the enrollment, retention, and coverage under CHIP and Medicaid of low-income children who frequently change their State of residence or are temporarily located outside their State of residence.

A. CMS Historical Experience Related to Continuity of Coverage

In 2006, CMS prepared a Report to Congress as required by section 404 of the Health Care Safety Net Amendments Act of 2002 (Pub. L. 107–251) entitled ''Study Regarding Barriers to Participation of Farm Workers in Health Programs.'' This report highlighted problems experienced by migrant farmworkers and their families related to the barriers encountered in accessing health services through Medicaid and CHIP, and the lack of portability of Medicaid and CHIP coverage for farmworkers who are determined eligible in one State but who, due to the seasonal nature of the their work, periodically move to other States. We published the outcome of this study in a Report to Congress which identified five options to address the portability issues related to Medicaid and CHIP. The recommended options included the following:

- Interstate Compacts.
- Demonstration Projects.
- State Activities under Current Law Flexibility.
- National Migrant Family Coverage.
- Public-Private Partnerships.

The full Migrant Farmworkers Report to Congress can be viewed at: *http://cms.hhs.gov/Reports/Downloads/RTC-Leavitt2.pdf.*

B. Proposed Models for Coordination

We are using some of the recommendations from the Migrant Farmworkers Report to Congress as the basis for proposing models of coordination/portability to attempt to solve the problem of gaps in healthcare coverage for Medicaid and CHIP children who frequently change their State of residence. We have identified four proposed models including a new model titled ''National Children's Health Coverage Option'' on which we are seeking input. These models include:

(1) Interstate Compacts. Under current Federal law and regulations, States may enter interstate agreements to facilitate administration of their Medicaid and CHIP programs. Interstate compacts are agreements between States that provide the framework for formalized interstate cooperation. The framework ranges from a more basic model in which States recognize each other's eligibility determinations to models with States fully reimbursing out-of-state providers. States may seek to develop interstate agreements or compacts to facilitate timely eligibility determinations or redeterminations for applicants and recipients, such as migrant farmworkers, and agree upon detailed mechanisms by which payment reciprocity can be made among two or more States. These interstate arrangements, however, do not necessarily require Federal approval. By establishing and joining an

interstate compact on Medicaid and CHIP for children, States can more readily recognize each other's eligibility determinations and reimburse out-of-state providers. As a result, they can provide more seamless Medicaid and CHIP coverage to low-income children. States currently participate in a variety of interstate compacts including one pertaining to Federal adoption assistance/Medicaid recipients entitled the ''Interstate Compact on Adoption and Medical Assistance'' (ICAMA). Further information related to ICAMA can be viewed at: *http://www.aaicama.org/cms/*.

(2) Demonstration Projects. Section 1115(a) of the Social Security Act (the Act) provides the Secretary of Health and Human Services with the authority to authorize experimental, pilot, or demonstration projects which, in the judgment of the Secretary, are likely to assist in promoting the objectives of the Medicaid statute. States can request section 1115 authority to create a standard set of benefits or eligibility coverage across States that differ from the set of benefits provided under the State plan in each of those States or to expand coverage to groups of individuals, including parents and caretaker relatives, or to provide greater flexibility in their programs. Budget neutrality is required for title XIX programs approved under section 1115 authority under the policies of the Office of Management and Budget. A recent example of how CMS used section 1115 authority was in 2005, in response to the devastation caused by Hurricane Katrina on the health care system of the Gulf coast of Louisiana and Mississippi; the Secretary was granted the authority to approve section 1115 demonstration waivers that granted States time-limited waiver authority to facilitate expedited enrollment into Medicaid and CHIP programs for survivors of Hurricane Katrina who needed to access healthcare services in locations other than their home States. Under Hurricane Katrina demonstrations, we granted time-limited waiver authorities to States for the following:

- Simplified eligibility criteria for Medicaid and CHIP eligible groups.
- Comparability/amount, duration, and scope of benefit packages.
- Simplified eligibility determination processes in order to permit evacuees to access needed health care services in their host State.

(3) State Activities under Current Law's Flexibility. States may explore current flexibility under State plan authority to improve the continuity of coverage for Medicaid and CHIP eligible children. Some of the flexibility offered under the State plan authority may be designed to improve service delivery coordination; enhance enrollment and portability arrangements; and enhance Medicaid and CHIP managed care coordination at the State and health plan levels to facilitate enrollment and portability. Under this model for example, a State may choose to align/standardize their eligibility and enrollment processes with a neighboring State in order to improve coordination of Medicaid and CHIP coverage for children.

(4) Public-Private Partnerships. States may engage in public-private partnerships in order to research or pilot initiatives that improve the portability of Medicaid and CHIP coverage for low-income children.

(5) National Children's Health Coverage Option. This model would develop a national health insurance plan for children with a minimum benefit plan to be offered by every State. Under this option, certain statutory changes would be required related to the definition of residency and eligibility criteria for children, specifically a minimum national coverage for all children under age 21 years and a change in the income standard to a specified minimum level for all children. State residency could be defined to make it easier to cover children in the State where they are living, even if they do not intend to remain there permanently or for an indefinite period.

C. Request for Comments

We request public comments on the proposed models to include the following:

(1) Advantages (benefits) and/or disadvantages (negatives) related to each of the proposed models.

(2) Best practices States may currently have in place to ensure interstate continuity and coordination of enrollment for Medicaid and CHIP children.

(3) Recommendations for new models that will facilitate coordination of enrollment, retention, and coverage for Medicaid and CHIP children.

(4) Additional comments related to programmatic operations and/or statutory changes that may be required in order to create the model process.

D. Use of Public Comments

We will review the public comments and consider the information received in the development of the model process for the coordination of enrollment, retention, and coverage for Medicaid and CHIP children who frequently move from their State of residence.

II. Provisions of the Notice With Comment

The purpose of this notice is to provide the opportunity for public input/consultation in developing a model process for the coordination of enrollment, retention and coverage for Medicaid and CHIP eligible children who, because of migration of families, emergency evacuations, natural or other disasters, public health emergencies, educational needs, or otherwise, frequently change their State of residency or otherwise are temporarily located outside the State of their residency.

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.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1115 of the Social Security Act.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: November 2, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–29724 Filed 12–17–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1416–N]

Medicare Program; First Semi-Annual Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—February 17–19, 2010

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the first semi-annual meeting of the

Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) for 2010. The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. We will consider the Panel's advice as we prepare the proposed and final rules that would update the hospital Outpatient Prospective Payment System (OPPS) for CY 2011.

DATES: *Meeting Dates:* We are scheduling the first semi-annual meeting in 2010 for the following dates and times:

- Wednesday, February 17, 2010, 1 p.m. to 5 p.m. eastern standard time (e.s.t.) [1]
- Thursday, February 18, 2010, 8 a.m. to 5 p.m. (e.s.t.) [1]
- Friday, February 19, 2010, 8 a.m. to 12 noon (e.s.t.) [2]

[1] The times listed in this notice are approximate times; consequently, the meetings may last longer than listed in this notice, but will not begin before the posted times.

[2] If the business of the Panel concludes on Thursday, February 18, 2010, there will be no meeting on Friday, February 19, 2010.

Deadlines:

Deadline for Hardcopy Comments/ Suggested Agenda Topics—5 p.m. (e.s.t.), Monday, January 13, 2010.

Deadline for Hardcopy Presentations—5 p.m. (e.s.t.), Monday, January 13, 2010.

Deadline for Attendance Registration—5 p.m. (e.s.t.), Wednesday, February 10, 2010.

Deadline for Special Accommodations—5 p.m. (e.s.t.), Wednesday, February 10, 2010.

Submission of Materials to the Designated Federal Official

Because of staffing and resource limitations, we cannot accept written comments and presentations by FAX, nor can we print written comments and presentations received electronically for dissemination at the meeting.

Only hardcopy comments and presentations can be reproduced for public dissemination. All hardcopy presentations *must be accompanied by Form CMS–20017 (revised 01/07).* The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf.*

Presenters must use the most recent copy of CMS–20017 (updated 01/07) at the above URL. Additionally, presenters must *clearly* explain the action(s) that they are requesting CMS to take in the appropriate section of the form. They must also clarify their relationship to the organization that they represent in the presentation.

Note: Issues that are vague, or that are outside the scope of the APC Panel's purpose, will not be considered for presentations and comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.

We are also requiring electronic versions of the written comments and presentations, in addition to the hardcopies.

In summary, presenters and/or commenters must do the following:

- Send both electronic and hardcopy versions of their presentations and written comments by the prescribed deadlines.
- Send electronic transmissions to the e-mail address below.
- Do not send pictures of patients in any of the documents unless their faces have been blocked out.
- Do not send documents electronically that have been archived.
- Mail (or send by courier) to the Designated Federal Official (DFO) all hardcopies, accompanied by Form CMS–20017 (revised 01/07), if they are presenting, as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.
- Commenters are not required to send Form CMS–20017 with their written comments.

ADDRESSES: The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Shirl Ackerman-Ross, DFO CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850.

Phone: (410) 786–4474.

Note: We recommend that you advise couriers of the following information: When delivering hardcopies of presentations to CMS, if no one answers at the above phone number, please call (410) 786–4532 or (410) 786–9316.

The e-mail address for comments, presentations, and registration requests is *CMS APCPanel@cms.hhs.gov.*

Note: There is NO underscore in this e-mail address; there is a SPACE between CMS and APCPanel.

News media representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The phone numbers for the CMS Federal Advisory Committee Hotline are 1–877–449–5659 (toll free) and (410) 786–9379 (local).

Web Sites: The following information is available on the CMS Web site at *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage.*

Note: There is an UNDERSCORE after FACA/05(like this_); there is no space.

- Additional information on the APC meeting agenda topics
- Updates to the Panel's activities
- Copies of the current Charter
- Membership requirements.

You may also search information about the APC Panel and its membership in the FACA database at the following URL: *https://www.fido.gov/facadatabase/public.asp.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) to consult with an expert, outside advisory panel on the clinical integrity of the APC groups and weights established under the Medicare hospital OPPS.

The APC Panel meets up to three times annually. The Charter requires that the Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. The Panel consists of up to 15 members who are representatives of providers and a Chair.

Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. The Secretary or Administrator selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations.

All members must have technical expertise to enable them to participate fully in the Panel's work. Such expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing systems; APC groups; Current Procedural Terminology codes; and alpha-numeric Health Care Common Procedure Coding System codes; and the use of, and payment for, drugs, medical devices, and other services in the outpatient setting, as well as other forms of relevant expertise. Details regarding membership requirements for the APC Panel are found on the FACA and CMS Web sites as listed above.

The Panel presently consists of the following members:

- E. L. Hambrick, M.D., J.D., Chair, CMS Medical Officer.
- Ruth L. Bush, M.D., M.P.H.
- Dawn L. Francis, M.D., M.H.S.
- Patrick A. Grusenmeyer, Sc.D., F.A.C.H.E.
- Kathleen Graham, R.N., M.S.H.A., C.P.H.Q., A.C.M.
- David Halsey, M.D.
- Judith T. Kelly, B.S.H.A., R.H.I.T., R.H.I.A., C.C.S.
- Michael D. Mills, Ph.D.
- Thomas M. Munger, M.D., F.A.C.C.
- Agatha L. Nolen, D.Ph., M.S., F.A.S.H.P.
- Randall A. Oyer, M.D.
- Beverly Khnie Philip, M.D.
- Daniel Pothen, M.S., R.H.I.A., C.P.H.I.M.S., C.C.S.-P, C.H.C.
- Russ Ranallo, M.S., B.S.
- Michael A. Ross, M.D., F.A.C.E.P.
- Patricia Spencer-Cisek, M.S., A.P.R.N.-B.C., A.O.C.N.

II. Agenda

The agenda for the February 2010 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Evaluating APC group weights.
- Reviewing the packaging of OPPS services and costs, including the methodology and the impact on APC groups and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using single and multiple procedure claims data for CMS' determination of APC group weights.
- Addressing other technical issues concerning APC group structure.

Note: The subject matter before the Panel will be limited to these and related topics. Issues related to calculation of the OPPS conversion factor, charge compression, pass-through payments, or wage adjustments are not within the scope of the Panel's purpose. Therefore, these issues will not be considered for presentations and/or comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.

The Panel may use data collected or developed by entities and organizations, other than the Department of Health and Human Services (DHHS) and CMS, in conducting its review. We recommend organizations to submit data for the Panel's and CMS staff's review.

III. Written Comments and Suggested Agenda Topics

Hardcopy and electronic written comments and suggested agenda topics should be sent to the DFO as specified in the **ADDRESSES** section of this notice. The DFO must receive these items by 5 p.m. (e.s.t.), Monday, January 13, 2010. There will be no exceptions. We appreciate your cooperation on this matter.

The written comments and suggested agenda topics submitted for the February 2010 APC Panel meeting must fall within the subject categories outlined in the Panel's Charter and as listed in the Agenda section of this notice.

IV. Oral Presentations

Individuals or organizations wishing to make 5-minute oral presentations must submit hardcopy and electronic versions of their presentations to the DFO by 5 p.m. (e.s.t.), Monday, January 13, 2010, for consideration.

The number of oral presentations may be limited by the time available. Oral presentations should not exceed 5 minutes in length for an individual or an organization.

The Chair may further limit time allowed for presentations due to the number of oral presentations, if necessary.

V. Presenter and Presentation Information

All presenters must submit Form CMS–20017 (revised 01/07). Hardcopies are required for oral presentations; however, electronic submissions of Form CMS–20017 are optional. The DFO must receive the following information from those wishing to make oral presentations:

- Form CMS–20017 completed with all pertinent information identified on the first page of the presentation.
- One hardcopy of presentation.
- Electronic copy of presentation.
- Personal registration information as described in the ''Meeting Attendance'' section below.
- Those persons wishing to submit comments only must send hardcopy and electronic versions of their comments, but they are not required to submit Form CMS–20017.

VI. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VII. Oral Comments

In addition to formal oral presentations, there will be opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

VIII. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Attendance will be determined on a first-come, first-served basis.

Persons wishing to attend this meeting, which is located on Federal property, must e-mail the DFO to register in advance no later than 5 p.m. (e.s.t.), Wednesday, February 10, 2010. A confirmation will be sent to the requester(s) by return e-mail.

The following personal information must be e-mailed to the DFO by the date and time above:

- Name(s) of attendee(s).
- Title(s).
- Organization.
- E-mail address(es).
- Telephone number(s).

IX. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting including presenters must be registered and on the attendance list by the prescribed date.
- Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.
- Attendees must present photographic identification to the Federal Protective Service or Guard Service personnel before entering the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- All persons entering the building must pass through a metal detector.
- All items brought into CMS including personal items, such as laptops, cell phones, and palm pilots, are subject to physical inspection.
- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

X. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by 5 p.m. (e.s.t.), Wednesday, February 10, 2010.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital

Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: December 11, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–30123 Filed 12–17–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0575]

Incorporation of New Science Into Regulatory Decisionmaking Within the Center for Devices and Radiological Health; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting entitled: ''Incorporation of New Science Into Regulatory Decisionmaking Within the Center for Devices and Radiological Health.'' The purpose of the public meeting is to identify strategies and means for incorporating new science into the regulatory decisionmaking process within the agency's Center for Devices and Radiological Health (CDRH). New science may include novel technologies or novel uses of existing technologies, evolving information and knowledge, or new methods to support decisionmaking. FDA is seeking input on a number of specific questions regarding how CDRH should anticipate and respond to new or evolving scientific knowledge in a manner that is consistent with our mission to protect and promote the public health, and requests comments on this topic.

Dates and Time: The public workshop will be held on February 9, 2010, from 8 a.m. to 5 p.m. Persons interested in attending the meeting must register by 5 p.m. on February 3, 2010.

Location: The public meeting will be held at the Hilton Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Maggie Dietrich, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 5449, Silver Spring, MD 20993–0002, 301–796–5094, FAX: 301–847–8510, e-mail: *maggie.dietrich@fda.hhs.gov*.

Registration: Register online at *http://www.fda.gov/MedicalDevices/News Events/WorkshopsConferences/default.htm* (select the appropriate meeting from the list). Provide complete contact information for each attendee, including name, title, affiliation, address, e-mail, and telephone number. Registration requests should be received by February 3, 2010. Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the public meeting will be provided on a space-available basis beginning at 7 a.m.

If you need special accommodations due to a disability, please contact Maggie Dietrich (see *Contact Person*) at least 7 days in advance.

Comments: FDA is holding this public meeting to obtain information on a number of specific questions regarding how CDRH should anticipate and respond to new or evolving scientific knowledge in a manner that is consistent with FDA's mission to protect and promote the public health. The deadline for submitting comments regarding this public meeting is February 24, 2010.

Regardless of attendance at the public meeting, interested persons may submit written or electronic comments. 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*. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Please also indicate the specific question(s) addressed. (See section II 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.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's CDRH uses science to guide our regulatory decisions, including those related to premarket approval or clearance, postmarket oversight, and compliance.

CDRH faces unique challenges in that the products we regulate are constantly changing, either through incremental or disruptive advances. Simultaneously, our understanding of the products we oversee is subject to change as we obtain new scientific information or develop new methods to assess existing data.

Given the ever-changing environment in which we operate, CDRH's regulatory decisionmaking process must be able to adapt as science evolves and as new information emerges about the risks or benefits of particular medical devices or radiation-emitting electronic products. For example, in some cases, new information gathered about the risk-benefit profile of a device on the market may justify requiring additional data on similar types of devices during premarket review, in order to provide sufficient confidence in the product's safety and effectiveness. At the same time, the center seeks to foster innovation by providing industry with a reasonable degree of predictability in our regulatory pathways. Determining the optimal way to anticipate and respond to new science is an important challenge, and the center seeks public input on how to best address it.

CDRH has formed an internal Task Force on Utilization of New Science in Regulatory Decisionmaking to review how the center uses science in our regulatory decisionmaking process, and to make recommendations for enhancements. The principal goals of the Task Force are: (1) To propose systems that will allow CDRH to be ''predictably adaptive'' to new science; and (2) to identify proactive steps that CDRH can take to keep staff abreast of new science and increase our technical competence and analytic capability in order to enhance our decisionmaking.

The notion of ''predictable adaptability'' refers to having the flexibility to appropriately respond to changes in science, while doing so through a reasonably consistent process. Given that scientific knowledge is continually changing, the model of being ''predictable'' by always requiring the same type and level of scientific evidence to justify decisions will not necessarily suffice. As the scientific landscape changes, the kind of information we need in order to make well-supported decisions may change. In the past, CDRH has sometimes incorporated new science into our regulatory decisionmaking on an ad hoc, non-transparent basis. Such an approach can result in inconsistent regulatory expectations and less predictable decisionmaking.

CDRH seeks to move toward a different model of predictability: Creating and adhering to clear procedures for adapting to new science, and applying a consistent rationale for doing so in as timely and transparent a manner as is appropriate and feasible. In order to achieve this goal, the center

will need to identify how and when to adapt to new science, with a full consideration of the nature of the science itself, public health implications, and our statutory and regulatory framework.

II. Public Meeting

As one step towards establishing the center's approach for incorporating new science in regulatory decisionmaking, CDRH will hold a public meeting to discuss the issues the Task Force is considering. The objective of the meeting will be to hear input on these issues from a broad range of external constituencies, including industry representatives, consumer and patient advocates, academic experts, other members of Government, and the general public.

To focus the center's strategies, CDRH requests feedback related to the following questions, which will serve as the basis for discussion at the public meeting:

A. Adapting to New Scientific Information

(1) When CDRH gains new scientific information about a particular product or type of product, what should the criteria be for changing CDRH's expectations of the evidence necessary for pre- or postmarket regulatory decisions, keeping in mind our mission to protect and promote the public health, as well as our statutory and regulatory framework? What are potential ''triggers'' for making such changes?

(2) When such changes are warranted, how should the center communicate them to industry, consumers, and other external constituencies? Should CDRH have a new regulatory paradigm for communicating with outside parties?

(3) When such changes are warranted, how should CDRH apply them to devices currently under review?

(4) When such changes are warranted, how should CDRH apply them to products currently on the market? For example, how should CDRH treat ''first-generation'' products as new and improved versions are developed?

B. Adapting to Novel Technologies or Novel Uses of Existing Technologies

(1) Assessing the safety and effectiveness of a novel technology can be challenging because the extent of information on and the level of understanding of the technology's risk-benefit profile or manufacturing process is less mature than that of a technology for which there is extensive ''real-world'' experience. What steps should CDRH take to assure that novel technologies or novel uses of existing technologies are safe and effective, without creating barriers to innovation, keeping in mind our statutory and regulatory framework?

C. Enhancing CDRH's Technical Competence and Analytical Capability

(1) With current resources, what proactive steps should CDRH take to address gaps in staff-members' knowledge about new science and reduce uncertainty in science-based regulatory decisionmaking?

During the meeting, there will be a moderated discussion between CDRH staff and invited experts from the private and public sectors about the questions presented in this document. The invited participants will not be asked to develop consensus recommendations, but rather to provide their individual perspectives. The topics for discussion will be presented in conjunction with hypothetical case studies for consideration. There will also be an opportunity for general attendees to provide feedback on the discussion topics during periodic open sessions.

In advance of the meeting, additional information, including the case studies, will be made available on the Internet. This information will be placed on file in the public docket (docket number found in brackets in the heading of this document), which is available at *http://www.regulations.gov*. This information will also be available on FDA's Medical Devices Web site at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list), along with the agenda for the meeting.

Transcripts: Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public meeting at a cost of 10 cents per page. A transcript of the public meeting will be available on the Internet at *http://www.regulations.gov*.

Dated: December 11, 2009.

Jeffrey Shuren,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. E9–30114 Filed 12–17–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3221–N]

Medicare Program; Physician Quality Reporting Initiative (PQRI): Listening Session-February 2, 2010.

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

ACTION: Notice of meeting.

SUMMARY: This notice announces a listening session to discuss the Physician Quality Reporting Initiative (PQRI). The purpose of the listening session is to solicit input from participating stakeholders on—

- The individual quality measures and measures groups (for example, suggestions for new measures groups or suggestions for the composition of existing measures group(s) being considered for possible inclusion in the proposed set of quality measures for use in the 2011 PQRI program and;
- Key components of the design of the PQRI program, such as possible reporting mechanisms, reporting periods, criteria for satisfactory reporting, the group practice reporting option, and public reporting of 2011 PQRI data.

Measure developers, eligible professionals, professionals associations, such as medical specialty societies, and other interested stakeholders are invited to participate, in person or by teleconference.

The opinions and alternatives provided during this meeting will assist us as we evaluate the PQRI program for 2011. We anticipate posting a summary of the individual quality measures and measures groups for possible inclusion in the proposed set of quality measures as well as possible program design options under consideration for use in the 2011 PQRI program on the PQRI section of the CMS Web site at *http://www.cms.hhs.gov/PQRI* by January 18, 2010.

The meeting is open to the public, but attendance is limited to space and teleconference lines available.

DATES: *Meeting Date:* The listening session will be held on Tuesday, February 2, 2010 from 10 a.m. until 4:30 p.m. Eastern Standard Time (E.S.T).

Meeting Registration and Request for Special Accommodations Deadline: Registration opens on Monday, December 21, 2009. For security reasons, registration must be completed no later than 5 p.m. E.S.T. on Wednesday, January 27, 2010. Requests

for special accommodations must be received by 5 p.m. E.S.T. on Wednesday, January 27, 2010.

Submission of Written Comments or Statements Deadline: Written comments or statements on the issues that were discussed at this listening session may be sent via mail, fax, or electronically to the address specified in the **ADDRESSES** section of this notice and must be received by 5 p.m. E.S.T. on Friday February 12, 2010.

ADDRESSES: *Meeting Location:* The listening session will be held in the main auditorium of the Central Building of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Persons interested in attending the meeting or participating by teleconference must register by completing the on-line registration via the Web site at *http://www.usqualitymeasures.org.* Individuals who require special accommodations should send a request via email or regular mail to the contact specified in the **FOR FURTHER INFORMATION** section of this notice.

Written Comments or Statements: Written comments or statements may be sent via e-mail to *PQRITEMP@cms.hhs.gov* or sent via regular mail to: Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850, Mail Stop S3–02–01, Attn: 2011 PQRI Listening Session Comments. All persons planning to make a statement in person at the listening session are urged to submit statements in writing during the listening session and should subsequently submit the information electronically by the timeframe specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Regina Chell, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Mailstop S3–02–01, Attn: 2011 PQRI Listening Session, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Chell by phone at 410–786–6551, or via e-mail at *Regina.Chell@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The PQRI is a voluntary reporting program in which eligible professionals (and beginning in 2010, group practices) report data on quality measures to CMS. For 2010 and prior years, an eligible professional who satisfactorily reports data on quality measures may qualify to earn a PQRI incentive payment based on a percentage of the eligible professional's total estimated allowed Medicare Part B charges for covered professional services furnished during a specified reporting period. CMS is authorized to provide PQRI incentive payments through 2010, although changes being considered by Congress, if passed, could extend that authority beyond 2010. Under section 1848(k)(3)(B) of the Social Security Act (the Act), the term ''eligible professional'' means any of the following—

- A physician;
- A practitioner described in section 1842(b)(18)(C) of the Act;
- A physical or occupational therapist or a qualified speech-language pathologist; or qualified audiologist

The PQRI was first implemented in 2007 as a result of section 101(b) of Division B–Medicare Improvements and Extension Act of 2006 of the Tax Relief and Health Care Act of 2006 (Pub.L. 109–432) (MIEA–TRHCA), which was enacted on December 20, 2006. The PQRI was extended and further enhanced as a result of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (Pub.L. 110–173) (MMSEA), which was enacted on December 29, 2007, and the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275), which was enacted on July 15, 2008. Changes to the PQRI as a result of these laws, as well as information about the PQRI in 2007, 2008, 2009, and 2010, are discussed in detail in the Calendar Year (CY) 2008 Medicare Physician Fee Schedule (PFS) proposed rule (72 FR 38196 through 38204), CY 2008 PFS final rule with comment period (72 FR 66336 through 66353), CY 2009 PFS proposed rule (73 FR 38558 through 38575), CY 2009 PFS final rule with comment period (73 FR 69817 through 69847), CY 2010 PFS proposed rule (74 FR 33559 through 33589) and CY 2010 PFS final rule with comment period(74FR 61788 through 61844). In addition, detailed information about the PQRI is available on the CMS Web site at *http://www.cms.hhs.gov/PQRI.*

Section 1848(k)(2)(D) of the Act requires that, for the 2009 PQRI and subsequent years, for each quality measure adopted by the Secretary of the Department of Health and Human Services (the Secretary), the Secretary shall ensure that the eligible professionals have the opportunity to provide input during the development, endorsement, or selection of measures applicable to services they furnish. To satisfy this requirement with respect to the selection of 2011 PQRI measures, we intend to publish a proposed set of quality measures for the 2011 PQRI in the **Federal Register** via the CY 2011 PFS proposed rule. To assist us with identifying new measures or measures groups for the proposed set of 2011 PQRI quality measures, on November 16, 2009, we solicited suggestions for individual measures and measure groups [*e.g.,* suggestions for new measures groups and/or suggestions for the composition of existing measures group(s)] for possible inclusion in the proposed set of 2011 PQRI quality measures. The ''2011 PQRI Call for Measures'' was posted on the CMS Web site at *http://www.cms.hhs.gov/apps/QMIS/CallforMeasures.asp.* The deadline for submitting quality measures suggestions in response to the ''2011 PQRI Call for Measures'' was 5 p.m. E.S.T. on Wednesday, December 16, 2009.

We also intend to address other program components of the 2011 PQRI in the CY 2011 PFS proposed rule, such as the reporting mechanisms, reporting periods, criteria for satisfactory reporting, the group practice reporting option, and public reporting of 2011 PQRI data. We will formally propose aspects of the 2011 PQRI in the CY 2011 PFS proposed rule. Our goals for the 2011 PQRI include increasing participation in this voluntary reporting program and leveraging the benefits of alternative reporting mechanisms, such as registry-based reporting, EHR-based reporting, and the group practice reporting option.

This listening session will be hosted to solicit input from eligible professionals and other interested parties on the individual quality measure and measures group suggestions received in response to the ''2011 PQRI Call for Measures'' and on other changes being considered for the future with regard to the key components of the PQRI described above. Prior to the listening session, we will post a summary of the individual quality measures and measures groups being considered for possible inclusion in the proposed set of quality measures for use in the 2011 PQRI program and the policy options related to the components of the program described above that we are considering to potentially propose for the 2011 PQRI on the CMS Web site at *http://www.cms.hhs.gov/PQRI.* We anticipate posting this summary by January 18, 2010. We will consider the input that we receive from stakeholders as a result of this listening session as we develop our policy proposals for the 2011 PQRI program. We will determine which individual measures and measures group(s) to include in the proposed set of 2011 quality measures and the

changes to the design of the PQRI to propose for 2011 and publish these proposals in the CY 2011 PFS proposed rule. After a period of public comment, we will make the determination with regard to the final set of quality measures for the 2011 PQRI and the final 2011 PQRI program requirements and publish them in the CY 2011 PFS final rule.

II. Listening Session Format

The listening session will be held on February 2, 2010 beginning at 10 a.m. E.S.T. with an overview of the objectives for the session. The remainder of the meeting will be devoted to presenting and receiving input on possible key program design changes under consideration for each of the major components of PQRI as follows—

- The individual quality measures and measure group suggestions received in response to the ''2011 PQRI Call for Measures'';
- Reporting mechanisms;
- Reporting periods;
- Criteria for satisfactory reporting;
- The group practice reporting option, and
- Policies with respect to public reporting of 2011 PQRI data.

Following each presentation, the meeting agenda will provide opportunities for brief 2-minute comments on each of the key issues from on-site session attendees. As time allows, telephone participants will also have the opportunity to provide brief 2-minutecomments on each of the key issues. A lunch break will occur at approximately 12:30 p.m. E.ST. The meeting will conclude by 4:30.p.m. E.S.T. Written submissions will also be accepted up until the timeframe specified in the **DATES** section of this notice.

III. Registration Instructions

While there is no registration fee, for security reasons, any persons wishing to attend this meeting must register by the date listed in the **DATES** section of this notice. Persons interested in attending the meeting or participating by teleconference must register by completing the online registration via the Web site at *http://www.usqualitymeasures.org*. The online registration system will generate a confirmation page to indicate the completion of your registration. Please print this page as your registration receipt. If seating capacity has been reached, you will be notified that the meeting has reached capacity.

Individuals may also participate in the listening session by teleconference. Registration is required as the number of call-in lines will be limited. The call-in number will be provided upon confirmation of registration.

We anticipate posting an audio download and/or transcript of the listening session on the CMS PQRI website after completion of the listening session. See Web site at *http://www.cms.hhs.gov/PQRI.*

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend you to arrive at the central building no later than 9 a.m. E.S.T.to allow for enough time to clear security and to check in before the session begins. The on-site check-in for visitors will begin at 9:30 a.m. E.S.T. All items brought to the building, whether personal or for the purpose of demonstration or to support a presentation, including items such as laptops, cell phones, and palm pilots, are subject to physical inspection.

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building. We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building. Seating capacity is limited to the first 250 registrants.

Authority: Section 1848(k) of the Social Security Act; Section 1848(m) of the Social Security Act.

(Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 10, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare and Medicaid Services.

[FR Doc. E9–30122 Filed 12–17–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7017–N]

Medicare Program; Meeting of the Advisory Panel on Medicare Education, February 3, 2010

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

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: *Meeting Date:* Wednesday, February 3, 2010 from 8:30 a.m. to 3 p.m., eastern standard time (e.s.t.).

Deadline for Meeting Registration, Presentations and Comments: Wednesday, January 27, 2010, 5 p.m., e.s.t.

Deadline for Requesting Special Accommodations: Wednesday, January 20, 2009, 5 p.m., e.s.t.

ADDRESSES: *Meeting Location:* Hilton Washington Hotel Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036, (202) 265–6800.

Meeting Registration, Presentations, and Written Comments: Lynne Johnson, Designated Federal Official, Division of Forum and Conference Development, Office of External Affairs, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–05–06, Baltimore, MD 21244–1850 or contact Ms. Johnson via e-mail at *Lynne.Johnson@cms.hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register by contacting Lynne Johnson at the address

listed in the **ADDRESSES** section of this notice or by telephone at (410) 786–0090, by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/FACA/04_APME.asp*) for additional information and updates on committee activities. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is ''in the public interest in connection with the performance of duties imposed * * * by law.'' Such duties are imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for ''activities * * * to broadly disseminate information to [M]edicare beneficiaries * * * on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options.''

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1311(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a). The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7899, February 17, 1999) and approved the renewal of the charter on January 21, 2009 (74 FR 13442, March 27, 2009). The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To provide recommendations on the development and implementation of a national Medicare education program that describes benefit options under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer.
- To make recommendations on how to expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate benefit options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Gwendolyn T. Bronson, SHINE/SHIP Counselor, Massachusetts SHINE Program; Dr. Yanira Cruz, President and Chief Executive Officer, National Hispanic Council on Aging; Stephen L. Fera, Vice President, Social Mission Programs, Independence Blue Cross; Nan Kirsten-Forté, Executive Vice President, Consumer Services, WebMD; Cathy Graeff, R.Ph., M.B.A., National, Senior Vice President, Communications and Industry Relations, National Council for Prescription Drug Programs; Dr. Carmen R. Green, Director, Pain Research Division, Associate Professor, Anesthesiology, University of Michigan Health System; Dr. Jessie C. Gruman, President and Chief Executive Officer, Center for the Advancement of Health; Cindy Hounsell, J.D., President, Women's Institute for a Secure Retirement; Kathy Hughes, Vice Chairwoman, Oneida Nation; Gail Hunt, President and Chief Executive Officer, National Alliance for Caregiving; Dr. Andrew M. Kramer, Professor of Medicine, University of Colorado, Denver; Dr. Frank B. McArdle, Manager, Hewitt Research Office, Hewitt Associates; Sandy Markwood, Chief Executive Officer, National Area Agencies on Aging; David Roberts, M.P.A., Vice President, Government Relations, Healthcare Information and Management Systems Society; Julie Bodën Schmidt, Associate Vice President, Training and Technical Assistance Department, National Association of Community Health Centers; Rebecca Snead, Executive Vice President and Chief Executive Officer, National Alliance of State Pharmacy Associations.

The agenda for the February 3, 2010 meeting will include the following:

- Recap of the previous (October 20, 2009) meeting.
- Subgroup Committee Work Summary.
- Medicare Outreach and Education Strategies.
- Public Comment.
- Listening Session with CMS Leadership.
- Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to Lynne Johnson at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Individuals requiring sign language interpretation or other special accommodations should contact Ms. Johnson at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 10, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. E9–30136 Filed 12–17–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

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 meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Institutional National Research Service Award (T32).

Date: January 11, 2010.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person:
Roy L White, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7176, Bethesda, MD 20892–7924. 301–435–0310. *whiterl@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Short-Term Research Education Program to Increase Diversity in Health-Related Research.
Date: January 14, 2010.
Time: 8:30 a.m. to 4 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: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924. 301–435–0277. *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Resource Related Research Project (R24).
Date: January 28, 2010.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Robert Blaine Moore, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7213, Bethesda, MD 20892. 301–594–8394. *mooreb@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Career Development Award to Promote Faculty Diversity/Re-Entry in Biomedical Research.
Date: January 29, 2010.
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: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924. 301–435–0277. *lismerin@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 14, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30111 Filed 12–17–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; International Centers of Excellence for Malaria Research.
Date: January 12–14, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, RM 3126, MSC–7616, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Regulation of Innate and Adaptive Immunity.
Date: January 13, 2010.
Time: 11 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Raymond Richard Schleef, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–3679, *schleefrr@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; International Centers of Excellence for Malaria Research.
Date: January 25–27, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Annie Walker-Abbey, PhD, Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 6700B Rockledge Drive, RM 3126, MSC–7616, Bethesda, MD 20892–7616, 301–451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: December 14, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–30101 Filed 12–17–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–1045]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: In 1999, the Transportation Equity Act for the 21st Century made $5 million available to the Secretary of Homeland Security for payment per year of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. In 2005, the law was amended, and the amount was increased to $5.5 million. The Coast Guard is publishing this notice to satisfy a requirement of the Act that a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register.** In this notice, we have specified the amount of monies the Coast Guard has committed, obligated, or expended during fiscal year 2009, as of September 30, 2009.

ADDRESSES: The Coast Guard has submitted a copy of this notice for publication on *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Jeff Ludwig, Regulations Development Manager, telephone 202–372–1061.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Transportation Equity Act for the 21st Century became law on June 9, 1998 (Pub. L. 105–178; 112 Stat. 107). The Act required that of the $5 million made available to carry out the national

recreational boating safety program each year, $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels. On September 29, 2005, the Sportfishing and Recreational Boating Safety Amendments Act of 2005 was enacted (Pub. L. 109–74; 119 Stat. 2031). This Act increased the funds available to the national recreational boating safety program from $5 million to $5.5 million annually, and stated that ''not less than'' $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels.

The responsibility to administer these funds was delegated to the Commandant of the United States Coast Guard. Subsection (c) of section 7405 of the Act directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year from 1999 through 2009 shall remain available until expended.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The total amount of funding transferred to the Coast Guard from the Sport Fish Restoration and Boating Trust Fund and committed, obligated, and/or expended during fiscal year 2009 for each activity is shown below.

Factory Visit Program/Boat Testing Program: Funding was provided to continue the national recreational boat factory visit program, initiated in January 2001. The factory visit program currently allows contractor personnel, acting on behalf of the Coast Guard, to visit 2,000 recreational boat manufacturers each year to either inspect for compliance with Federal regulations, communicate with the manufacturers as to why they need to comply with Federal regulations, or educate them, as necessary, on how to comply with Federal regulations. Funding was also provided for testing of certain associated equipment and in-water testing of atypical and used recreational boats for compliance with capacity and flotation standards. ($2,337,948).

New Recreational Boating Safety Associated Travel: Travel by employees of the Boating Safety Division was performed to carry out additional recreational boating safety actions and to gather background and planning information for new recreational boating safety initiatives, in support of the National Recreational Boating Safety Program Strategic Plan. ($22,793).

Boating Accident News Clipping Services: Funding was provided to continue to gather daily news stories of recreational boating accidents nationally for more real time accident information and to identify accidents that may involve regulatory non-compliance or safety defects. ($64,000).

Accident Investigation Tiger Team: Funding was provided to continue to provide on-call expert accident investigative services for any boating accident that appeared to involve a regulatory non-compliance or safety defect. ($132,087).

Web-based Document Management System: Funding was provided to continue to provide a Web-based document management system to better enable the handling of thousands of recreational boating recall case and campaign reports. ($56,200).

Recreational Boating Safety (RBS) Outreach Program: Funding was provided for this program which provides full marketing, media, public information, and program strategy support to the nation-wide RBS effort. The goal is to coordinate the RBS outreach initiatives and campaigns, some of which include: National Boating Under the Influence Campaign (BUI), ''Boat Responsibly!'', Life Jacket Wear, Vessel Safety Check Program (VSC), Boating Safety Education Courses, Propeller Strike Avoidance, Carbon Monoxide Poisoning, and other recreational boating safety issues on an as needed basis. ($789,019).

Web site Support: Funding for this initiative provides a full range of public media and boating safety information at *http://www.uscgboating.org* for a worldwide audience. It covers a wide spectrum of boating safety related topics and is dedicated to reducing loss of life, injuries, and property damage that occur on U.S. waterways by improving the knowledge, skills, and abilities of recreational boaters. ($188,137).

Boating Accident Report Database (BARD) Web System: BARD Web System funding enables reporting authorities in the 50 States, five U.S. Territories, and the District of Columbia to submit their accident reports electronically over a secure Internet connection. The system also enables the user community to generate statistical reports that show the frequency, nature, and severity of boating accidents. FY 09 funds supported system maintenance, development, and technical (hotline) support. ($335,624).

Recreational Boat Rental Education Package: Funding was provided to develop a standardized educational package for recreational boat rental agencies to use to provide the necessary safety information to renters prior to renting a boat. ($2,161).

Personnel Support: Funding was provided for personnel to support the development of new regulations and to conduct boating safety-related research and analysis ($710,103).

National Recreational Boating Survey: A national recreational boating survey is being conducted to obtain up-to-date statistical estimates on recreational boating. It is anticipated that the first surveys will be conducted in the spring of 2010, pending Office of Management and Budget (OMB) approval. ($224,625).

Reimbursable Salaries: Funding was provided to carry out the work as prescribed in 46 U.S.C. 13106(c) and as described herein. The first position was that of a professional mathematician/statistician to conduct necessary national surveys and studies on recreational boating activities as well as to serve as a liaison to other Federal agencies that are conducting boating surveys so that we can pool our resources and reduce costs. The second position was that of Outreach coordinator with responsibility of overseeing and managing RBS projects related to carbon monoxide poisoning, propeller injury mitigation, manufacturer compliance initiatives, etc. ($300,098).

Of the $5.5 million made available to the Coast Guard in fiscal year 2009, $3,598,866 has been committed, obligated, or expended and an additional $1,568,929 of prior fiscal year funds have been committed, obligated, or expended, as of September 30, 2009. Approximately $7.9 million has not been committed, obligated, or expended from previous years and is being reserved for a multi-year national boating survey.

This notice is issued under the authority of 46 U.S.C. 13106(c)(4).

Dated: December 14, 2009.

K.S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. E9–30070 Filed 12–17–09; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–101]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; HUD Core Activities Reporting Related to the Recovery Act

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: December 28, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; *e-mail: Lillian.L.Deitzer@hud.gov;* telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

In addition, Section 1512 of the Recovery Act requires that not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a federal agency shall submit a report to that agency that contains: (1) The total amount of recovery funds received from the agency; (2) the amount of recovery funds received that were expended or obligated, to projects or activities; and (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including the name of the project or activity; a description of the project or activity, an evaluation of the completion status of the project or activity; an estimate of the number of jobs created and the number of jobs retained by the project or activity; and for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act and name of the person to contact at the agency if there are concerns with the infrastructure investment.

This Notice also lists the following information:

Title of Proposal: HUD Core Activities Reporting related to the Recovery Act.

Description of Information Collection: Public Housing Capital Fund, Assisted Housing Stability and Energy and Green Retrofit Investments Program, Community Development Block Grants, Indian Community Development Block Grant, Program, Native American Housing Block Grants, Native Hawaiian Housing Block Grants, Tax Credit Assistance Program, Lead Hazard Control Grant Program; must provide information to HUD for the reporting requirements of HUD ARRA Section 1512. (''Recovery Act'') grants. Section 1512 of the Recovery Act details the reporting requirements for the recipients of recovery Act funding. Recipients are to report on the obligation and expenditure of Recovery Act funds, the projects on which those funds have been obligated and expended, an evaluation of the completion status of projects and the number of jobs created and jobs retained by the project.

OMB Control Number: 2577–0264.

Agency Form Numbers: N/A, the data will be collected utilizing a web-based application.

Members of Affected Public: State, Local or Tribal Government and Non-profit organization.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: The estimated number of respondents is 5,500 and the number of responses is 4. There will be in total, approximately 22,000 total responses. The total reporting burden is 88,000 hours.

Status of the proposed information collection: Revision of a currently approved collection for reporting on Recovery Act status.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 14, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–30140 Filed 12–17–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–102]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Disaster Housing Assistance Program (DHAP) Incremental Rent Transition (IRT) Study: Follow-up Contact

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency reinstatement and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: January 4, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within fourteen (14) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202)395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Lillian.L.Deitzer@hud.gov*; telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S.

Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a proposed reinstatement of data collection under OMB Control No. 2528–0256. The Disaster Housing Assistance Program (DHAP) was implemented in 2007 to provide rental assistance and case management services to eligible families displaced by Hurricanes Katrina and Rita. The amount and terms of the rental assistance provided varied over time. Researchers are documenting families as they transition from subsidized to market rate or alternative housing assistance programs and measuring outcomes over time. The DHAP IRT study's findings will assist the Department to understand how to most effectively return recipients of housing assistance to market rate housing following a disaster.

Approximately 1,425 recipients of DHAP assistance responded to an interim survey about their experiences with the program (conducted under OMB Control No. 2528–0256). The purpose of the reinstatement is to conduct follow-up contacts with the respondents to the earlier survey to confirm contact information, current housing and household status, and any potential future moves that might impact the researchers' ability to contact the respondent for a 12-month follow-up telephone survey. The follow-up contact is necessary to maximize the response rate for the 12-month follow-up telephone survey.

This Notice also lists the following information:

Title of Proposal: Disaster Housing Assistance Program (DHAP) Incremental Rent Transition (IRT) Study.

Description of Information Collection: This information collection is a follow-up contact with respondents to a previous survey of recipients of HUD rental assistance under DHAP (conducted under OMB Control No. 2528–0256). The Department of Housing and Urban Development is seeking emergency review of the Paperwork Reduction Act requirements associated with this follow-up contact. The purpose of the contact is to confirm contact information, current housing and household status, and any potential future moves that might impact the researchers' ability to contact the respondent for a 12-month follow-up telephone survey. The follow-up contact is necessary to maximize the response rate for the 12-month follow-up telephone survey.

OMB Control Number: 2528–0256.

Agency Form Numbers: N/A, a brief follow-up contact form will be administered by telephone by the research team.

Members of Affected Public: Recipients of DHAP assistance who responded to an interim survey (conducted under OMB Control No. 2528–0256).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of responses: The estimated number of respondents is 1,425 and the burden per respondents is 0.13 hours (8 minutes). The total reporting burden is 118.75 hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 14, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–30148 Filed 12–17–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–01]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain national exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, exceptions were granted to the Bay City, Michigan Housing Commission for the purchase and installation of tank-less water heaters in the Scattered Site Plumbing and Mechanical Project, and to the Housing Authority of Portland, Oregon's purchase of all iron, steel, and manufactured goods involved in the construction of the Resource Access Center.

FOR FURTHER INFORMATION CONTACT: Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4210, Washington, DC, 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act imposes a ''Buy American'' requirement on Recovery Act funds used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on December, 2, 2009, HUD granted the following two exceptions to the Buy American requirement:

1. *Bay City, Michigan Housing Commission.* Upon request of the Bay City Housing Commission, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Scattered Site Plumbing and Mechanical Project. The exception was granted by HUD on the basis that the iron, steel, or relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

2. *Housing Authority of Portland Oregon.* Upon request of the Housing Authority of Portland, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Resource Access

Center. The exception was granted by HUD on the basis that applicability of the Recovery Act Buy American requirements would be inconsistent with the public interest.

Dated: December 14, 2009.

Sandra B. Henriquez,

Assistant Secretary for Public And Indian Housing.

[FR Doc. E9–30132 Filed 12–15–09; 4:15 pm]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–49]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: December 10, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 12/18/2009

Suitable/Available Properties

Building

Massachusetts

Navy Oper. Support Center
640 Plantation St.
Worcester MA 01605
Landholding Agency: GSA
Property Number: 54200940007
Status: Excess
GSA Number: 1–N–MA–0918
Comments: 36,580 sq. ft. w/6 acres, presence of asbestos/lead paint, most recent use—training facility

Land

Missouri

Outer Marker Annex
Whiteman AFB
Knob Noster MO 65336
Landholding Agency: Air Force
Property Number: 18200940001
Status: Unutilized
Comments: 0.75 acres, most recent use—communication

Unsuitable Properties

Building

California

5 Bldgs.

Edwards AFB
Los Angeles CA 93524
Landholding Agency: Air Force
Property Number: 18200940002
Status: Unutilized
Directions: 50, 5510, 7161, 7163, 7184
Reasons: Secured Area

8 Bldgs.
Vandenberg AFB
Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 18200940003
Status: Unutilized
Directions: 182, 575, 578, 580, 582, 583, 584, 589
Reasons: Extensive deterioration Secured Area

4 Bldgs.
Vandenberg AFB
Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 18200940004
Status: Unutilized
Directions: 590, 596, 598, 599
Reasons: Extensive deterioration, Secured Area

5 Bldgs.
Vandenberg AFB
Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 18200940005
Status: Unutilized
Directions: 708, 742, 955, 1836, 13403
Reasons: Secured Area, Extensive deterioration

14 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940006
Status: Unutilized
Directions: 4158, 3936, 3942, 3947, 4314, 4318, 4256, 4120, 4103, 3871, 3873, 3887, 3919, 4133
Reasons: Extensive deterioration

Bldgs. 4320, 800
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940007
Status: Unutilized
Reasons: Extensive deterioration

4 Bldgs.
Beale AFB
Beale AFB CA 95903
Landholding Agency: Air Force
Property Number: 18200940008
Status: Unutilized
Directions: 4136, 5223, 5228, 5278
Reasons: Extensive deterioration

7 Bldgs.
Marine Corps Air Station
Miramar CA
Landholding Agency: Navy
Property Number: 77200940012
Status: Excess
Directions: 9022, 9272, 9539, 9540, 9604, 9623, 9624
Reasons: Secured Area, Extensive deterioration

Colorado

Bldg. 6980
U.S. Air Force Academy
El Paso CO 80840
Landholding Agency: Air Force
Property Number: 18200940009
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Florida

Facility 47120
Cape Canaveral AFB
Brevard FL 32925
Landholding Agency: Air Force
Property Number: 18200940010
Status: Unutilized
Reasons: Secured Area

Illinois

Bldgs. OB1, OB2, OM2
U.S. Coast Guard Station
Calumet Harbor
Chicago IL 60617
Landholding Agency: Coast Guard
Property Number: 88200940005
Status: Excess
Reasons: Secured Area, Extensive deterioration

Indiana

Bldg. 103
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18200940011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

New Jersey

Bldg. RPFN OM1
U.S. Coast Guard Station
Fortescue NJ 08321
Landholding Agency: Coast Guard
Property Number: 88200940004
Status: Unutilized
Reasons: Extensive deterioration

New Mexico

Bldg. 1267, 1620 Holloman AFB
Otero NM 88330
Landholding Agency: Air Force
Property Number: 18200940013
Status: Unutilized
Reasons: Secured Area

South Carolina

10 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200940014
Status: Unutilized
Directions: B16, B34, B122, B219, B220, B221, B403, B418, B428, B430
Reasons: Secured Area

South Carolina

5 Bldgs.
Shaw AFB
Sumter SC 29152
Landholding Agency: Air Force
Property Number: 18200940015
Status: Unutilized
Directions: B800, B900, B911, B1040, B1041
Reasons: Secured Area

7 Bldgs.
Shaw AFB
Sumber SC 29152
Landholding Agency: Air Force
Property Number: 18200940016
Status: Unutilized
Directions: B1702, B1707, B1708, B1804, B1813, B1907, B5226
Reasons: Secured Area

Texas

4 Bldgs.
Dyess AFB
Dyess AFB TX
Landholding Agency: Air Force
Property Number: 18200940017
Status: Unutilized
Directions: FNWZ 5017, 5305, 6015, 6122
Reasons: Secured Area

Bldg. 09–145
Pantex Plant
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200940006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

West Virginia

Bldgs. 101, 110
Air National Guard
Martinsburg WV 25405
Landholding Agency: Air Force
Property Number: 18200940018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Unsuitable Properties

Land

Indiana

1.059 acres
Grissom AFB
Peru IN 46970
Landholding Agency: Air Force
Property Number: 18200940012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

Washington

Approx ¼ acre
Highway 25 N
Northport WA 99157
Landholding Agency: GSA
Property Number: 54200940008
Status: Excess
GSA Number: 9–Z–WA–1246
Reasons: Within 2000 ft. of flammable or explosive material

[FR Doc. E9–29850 Filed 12–17–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is

announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: January 13, 2010, at 9:30 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The meeting agenda will include discussions on the Trustee Council's National Environmental Policy Act process, a report on lingering oil, and revisions to the Public Advisory Committee Charter.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E9–30097 Filed 12–17–09; 8:45 am]

BILLING CODE 4310–RG–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–631]

In the Matter of Certain Liquid Crystal Display Devices and Products Containing the Same; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to a limited exclusion order and cease and desist orders issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3061. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 25, 2008, based on a complaint filed by Samsung Electronics Co., Ltd. (''Samsung'') of Korea. 73 FR 4626–27. The complaint, as supplemented, 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 liquid crystal display devices and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,193,666; 6,771,344 (''the '344 patent''); 7,295,196; and 6,937,311. The complaint further alleges the existence of a domestic industry as to each asserted patent. The Commission's notice of investigation named the following respondents: Sharp Corporation (''Sharp Corp.'') of Japan; Sharp Electronics Corporation (''SEC'') of Mahwah, New Jersey; and Sharp Electronics Manufacturing, Company of America, Inc. (''SEMA'') of San Diego, California (collectively ''Sharp'').

On June 24, 2009, after reviewing in part the ALJ's final initial determination and requesting submissions on the issues of remedy, the public interest, and bonding, the Commission determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, and issued a limited exclusion order directed to all Sharp products found in violation and cease and desist orders directed to SEC and SEMA. The limited exclusion order prohibits the unlicensed entry of liquid crystal display (''LCD'') devices, including display panels and modules, and LCD televisions or professional displays containing the same that infringe the asserted claims of the '344 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of, any of the Sharp respondents. The cease and desist orders prohibit SEC and SEMA from engaging in certain activities in the United States related to the infringing LCD devices.

On December 1, 2009, complainant Samsung filed a complaint for enforcement proceedings under Commission Rule 210.75. Samsung asserts that Sharp has violated the Commission's limited exclusion and cease and desist orders by the continued practice of prohibited activities such as importing, marketing and selling infringing LCD devices, including LCD panels and modules, and LCD televisions and professional displays containing the same.

Having examined the complaint seeking a formal enforcement proceeding, and having found that the complaint complies with the requirements for institution of a formal enforcement proceeding contained in Commission rule 210.75, the Commission has determined to institute formal enforcement proceedings to determine whether Sharp is in violation of the Commission's limited exclusion order and cease and desist orders issued in the investigation, and what, if any, enforcement measures are appropriate. The following entities are named as parties to the formal enforcement proceeding: (1) Complainant Samsung, (2) all Sharp respondents, and (3) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

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 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

By order of the Commission.

Issued: December 14, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–30144 Filed 12–17–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–463 (Final) and 731–TA–1159 (Final)]

Certain Oil Country Tubular Goods from China

AGENCY: United States International Trade Commission.

ACTION: Additional scheduling date for the subject investigations.

DATES: *Effective Date:* December 14, 2009.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or

fred.ruggles@usitc.gov), 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: Effective September 15, 2009, the Commission established a schedule for the conduct of the final phase of the subject investigations (74 FR 50242, September 30, 2009). Although the Department of Commerce (''Commerce'') had not yet made its preliminary less than fair value (''LTFV'') determination, the Commission, for purposes of efficiency, included the antidumping duty investigation in the schedule for the countervailing duty investigation. On November 17, 2009, Commerce published in the **Federal Register** its preliminary antidumping duty determination and postponed its final antidumping duty determination (74 FR 59117). Accordingly, the Commission is issuing the additional scheduling date with respect to the antidumping duty investigation as follows: A supplemental brief addressing only Commerce's final antidumping duty determination is due on April 16, 2010. The brief may not exceed five (5) pages in length.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 15, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–30129 Filed 12–17–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–631]

In the Matter of Certain Liquid Crystal Display Devices and Products Containing the Same; Notice of Commission Determination To Modify a Limited Exclusion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify the limited exclusion order and cease and desist orders issued in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, 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 (*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 January 25, 2008, based on a complaint filed by Samsung Electronics Co., Ltd. (''Samsung'') of Korea. 73 FR 4626–27. The complaint, as supplemented, 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 liquid crystal display (''LCD'') devices and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 7,193,666; 6,771,344 (''the '344 patent''); 7,295,196; and 6,937,311 (''the '311 patent''). The complaint further alleges the existence of a domestic industry as to each asserted patent. The Commission's notice of investigation named the following respondents: Sharp Corporation of Japan; Sharp Electronics Corporation of Mahwah, New Jersey; and Sharp Electronics Manufacturing, Company of America, Inc. of San Diego, California.

On January 26, 2009, the ALJ issued his final initial determination (''ID'') finding a violation of section 337 by respondents as to the '311 and '344 patents only, and issued his recommended determinations on remedy and bonding. On February 9, 2009, Sharp and the Commission investigative attorney (''IA'') filed petitions for review of the final ID. The IA and Samsung filed responses to the petitions on February 17, 2009.

On March 30, 2009, the Commission determined to review the ID and requested submissions regarding the issues under review as well as remedy, the public interest and bonding. On June 24, 2009, the Commission determined that there is a violation of section 337 of the Tariff Act of 1930, as amended, and issued a limited exclusion order directed to all respondents and cease and desist orders directed to the respondents located in the U.S..

On November 24, 2009, Sharp petitioned to modify the remedial orders under Commission Rule 210.76(a)(1) in view of the remedial orders issued in 337–TA–634, *Certain Liquid Crystal Display Modules, Products Containing Same, and Methods for Using the Same*. The IA filed a response in support of the petition on November 30, 2009. On December 2, 2009, Samsung filed a response opposing the petition if not supplemented. On December 8, 2009, Sharp moved for leave to file a reply brief. The Commission has determined to deny Sharp's motion for leave to file a reply.

Having reviewed the parties' submissions, the Commission has determined that Sharp's petition satisfies the requirement of Commission Rule 210.76(a)(1), 19 CFR 210.76(a)(1), for modifying the remedial orders. Accordingly, the Commission has issued orders modifying the remedial orders previously issued in this investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.76(a)(1) of the Commission's Rules of Practice and Procedure (19 CFR 210.76(a)(1)).

By order of the Commission.

Issued: December 14, 2009.

Marilyn R. Abbott,

Secretary.

[FR Doc. E9–30141 Filed 12–17–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–632]

Certain Refrigerators and Components Thereof; Notice of Commission Determination To Review in Its Entirety a Final Determination on Remand Finding No Violation of Section 337; Schedule for Briefing on the Issues on Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety the presiding administrative law judge's (''ALJ'') final initial determination (''ID'') on remand issued on October 9, 2009, in the above-captioned investigation. The Commission is also requesting briefing on one issue on review and on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of the ALJ's IDs and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 21, 2008, the Commission instituted this investigation, based on a complaint filed by Whirlpool Patents Company of St. Joseph, Michigan; Whirlpool Manufacturing Corporation of St. Joseph, Michigan; Whirlpool Corporation of Benton Harbor, Michigan, and Maytag Corporation of Benton Harbor, Michigan (collectively, ''Whirlpool''). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, 19 U.S.C.* 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain refrigerators and components thereof that infringe certain claims of U.S. Patent Nos. 6,082,130 (''the '130 patent); 6,810,680 (''the '680 patent''); 6,915,644 (''the '644 patent''); 6,971,730 (''the '730 patent''); and 7,240,980 (''the '980 patent''). Whirlpool named LG Electronics, Inc.; LG Electronics, USA, Inc.; and LG Electronics Monterrey Mexico, S.A., De, CV (collectively, ''LG'') as respondents. The complaint, as supplemented, further alleged that an industry in the United States exists as required by subsection (a)(2) of Section 337 and requested that the Commission issue an exclusion order and cease and desist orders.

On May 1, 2008, Whirlpool filed a motion to partially terminate the investigation based on their withdrawal of the '730 patent and the '980 patent. On June 9, 2009, the ALJ issued an ID, Order No. 8, terminating the investigation, in part, as to the '730 and '980 patents. LG supported the motion. On June 24, 2008, the Commission determined not to review Order No. 8.

On September 11, 2008, Whirlpool and LG filed a joint motion seeking termination of this investigation with respect to the '680 patent and the '644 patent on the basis of a settlement agreement. On September 25, 2008, the ALJ issued an ID, Order No. 10, terminating the investigation, in part, as to the '680 and '644 patents. No petitions for review were filed. On October 27, 2008, the Commission determined not to review Order No. 10.

On October 17, 2008, Whirlpool filed a motion for summary determination that it had satisfied the importation requirement. On November 20, 2008, the ALJ issued an ID, Order No. 14, granting complainant's motion for summary determination of importation. No petitions for review were filed. On December 15, 2008, the Commission issued notice that it had determined not to review Order No. 14.

On July 24, 2008, Whirlpool filed a motion seeking leave to amend the complaint and notice of investigation to (1) remove references to patents that had been withdrawn from this investigation; (2) add a reference to a non-exclusive license that relates to two patents at issue; and (3) update the current state of the domestic industry. On November 25, 2008, the ALJ issued Order No. 15, in which he granted Whirlpool's motion as to (1) and (3) above and denied it with respect to (2). No petitions for review were filed. The Commission determined not to review the subject ID on December 15, 2008.

On February 26, 2009, the ALJ issued a final ID, in which he found no violation of Section 337. On March 11, 2009, Whirlpool filed a petition for review, and LG filed a contingent petition for review. Whirlpool, LG and the Commission investigative attorney (''IA'') filed responses. On April 27, 2009, the Commission determined to review the final ID in its entirety. 74 FR 20345–6 (May 1, 2009). In particular, the Commission was concerned with the ALJ's claim construction of the terms ''freezer compartment,'' ''disposed within the freezer compartment,'' and ''ice storage bin having a bottom opening.'' The Commission asked the parties to address several questions concerning claim construction.

After receiving briefing from the parties, the Commission determined to modify the ALJ's claim constructions of the terms ''freezer compartment,'' ''disposed within the freezer compartment,'' and ''ice storage bin having a bottom opening,'' determined to affirm the final ID's construction of the term ''ice maker,'' and determined to remand the investigation to the ALJ to make findings regarding infringement, validity, and domestic industry consistent with the Commission's claim constructions. The Commission further ordered the ALJ to issue a remand ID (''RID'') on violation and a recommended determination on remedy and bonding. The Commission also issued an Opinion detailing its reasons for modifying the claim constructions.

On July 22, LG filed a petition for reconsideration of the Commission's decision to modify the ALJ's claim constructions of the phrases ''freezer compartment'' and ''disposed within the freezer compartment.'' On August 28, 2009, the Commission denied LG's petition.

On October 9, 2009, the ALJ issued his RID, in which he found no violation of Section 337. Specifically, the ALJ found that the accused refrigerators and components thereof do not infringe claims 1, 2, 4, 6, 8, and 9 of the '130 patent literally or under the doctrine of equivalents. The ALJ also found that claims 1, 2, 4, 6, and 9 of the '130 patent are invalid under 35 U.S.C. 103 for obviousness, but that claim 8 of the '130 patent is not invalid under 35 U.S.C. 103. The ALJ further found that a domestic industry exists.

On October 26, 2009, Whirlpool filed a petition for review challenging the RID's conclusion of non-infringement and obviousness. LG also filed a contingent petition for review challenging the ALJ's findings concerning non-obviousness and his conclusion that a domestic industry exists. On November 3, 2009, LG filed a response to Whirlpool's petition. On November 4, 2009, Whirlpool filed a response to LG's petition. On November 6, 2009, the IA filed a combined response to both petitions.

Having examined the record of this investigation, including the ALJ's final RID, the Commission has determined to review the RID in its entirety.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following question:

> Does the prior art of record show an ice discharge chute, as recited in claim 2 of the '130 patent, that is separate from and below the bottom opening of the ice storage bin? Can this prior art be combined with the Hitachi reference, or any other prior art references that are currently in the record, to render claim 2 obvious?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issue identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Wednesday, December 30, 2009. Reply submissions must be filed no later than the close of business on Thursday, January 7, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR *210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

By order of the Commission.

Issued: December 14, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–30139 Filed 12–17–09; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 19, 2010. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is

completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agency-wide (N1–16–10–4, 1 item, 1 temporary item). Routine surveillance recordings, which were previously approved for disposal.

2. Department of Agriculture, Risk Management Agency (N1–258–08–22, 2 items, 2 temporary items). Records relating to legal proceedings involving agency employees.

3. Department of Agriculture, Risk Management Agency (N1–258–08–24, 2 items, 1 temporary item). Non-recordkeeping copies of requests, background documentation, and final determinations relating to interpretations of regulations made under the Federal Crop Insurance Act. Proposed for permanent retention are recordkeeping copies of these records.

4. Department of Defense, Office of the Secretary (N1–330–09–7, 1 item, 1 temporary item). Master files of an electronic information system used to allow military personnel and other U.S. citizens overseas to register to vote and request ballots.

5. Department of Defense, Army and Air Force Exchange Service (N1–334–09–5, 3 items, 3 temporary items). Master files and outputs of an electronic information system used to track the receipt and disposition of sample merchandise.

6. Department of Defense, Defense Finance and Accounting Service (N1–507–10–1, 2 items, 2 temporary items). Military pay records, including substantiating documents and daily transaction listings and registers.

7. Department of Justice, Civil Division (N1–131–08–2, 5 items, 1 temporary item). Records relating to proposed legislation concerning the alien property program. Proposed for permanent retention are subject files relating to claims and litigation, as well as orders and annual reports relating to the program.

8. Department of Justice, Civil Rights Division (N1–60–09–58, 5 items, 5 temporary items). Records relating to the Division's internal Web site, including Web content and Web management records.

9. Department of Justice, Civil Rights Division (N1–60–09–60, 1 item, 1 temporary item). Master files of an electronic information system that tracks time spent by employees on program activities in order to determine agency billing information.

10. Department of Justice, Executive Office for U.S. Attorneys (N1–60–09–38, 1 item, 1 temporary item). Master files for an electronic case management system used by the General Counsel's Office.

11. Department of Justice, U.S. Trustee Program (N1–60–09–63, 1 item, 1 temporary item). Master files of an electronic information system that supports review of means tests for income and assets requirements of Chapter 7 bankruptcy filings.

12. Department of Justice, Federal Bureau of Investigation (N1–65–09–33, 6 items, 6 temporary items). Master files, outputs, audit logs, and other records associated with the National Alert System, which provides notification of events to law enforcement personnel and other first responders.

13. Department of Transportation, Federal Aviation Administration (N1–237–10–1, 3 items, 3 temporary items). Records associated with a Web-based system used to capture and process information relating to air transportation oversight.

14. Department of Transportation, Federal Aviation Administration (N1–237–10–2, 1 item, 1 temporary item). Master files of an electronic information system used to track compliance with regulations relating to drug and alcohol abuse.

15. Department of Transportation, Federal Aviation Administration (N1–237–10–3, 1 item, 1 temporary item). Electronic data containing information provided by airlines regarding training programs and evaluations of proficiency.

16. Department of Transportation, Federal Aviation Administration (N1–237–10–5, 1 item, 1 temporary item). Electronic data used to track quality management improvement actions.

17. Department of Transportation, Federal Aviation Administration (N1–237–10–6, 1 item, 1 temporary item). Master files of an electronic information system used to track agency equipment and other assets.

18. Department of Transportation, Federal Aviation Administration (N1–237–10–7, 1 item. 1 temporary item). Master files of an electronic information system used to collect and maintain financial information provided by airports.

19. Department of Transportation, Federal Aviation Administration (N1–237–10–8, 1 item, 1 temporary item). Master files of an electronic information system which contains safety information obtained from inspection and surveillance activities at airports.

20. Department of Transportation, Federal Aviation Administration (N1–237–10–11, 1 item, 1 temporary item). Electronic data concerning agency-owned aircraft and their crew members.

21. Department of Transportation, Federal Aviation Administration (N1–237–10–12, 1 item, 1 temporary item). Engineering drawings of facilities of the national airspace system created by a computer aided engineering graphics system.

22. Department of Transportation, Federal Aviation Administration (N1–237–10–13, 1 item, 1 temporary item). Electronic data relating to evaluations of buildings and other facilities of the national airspace system.

23. Department of Transportation, Federal Aviation Administration (N1–237–10–14, 2 items, 2 temporary items). Records relating to configuration management for national airspace equipment, including change proposals and master files of an electronic information system used to track changes.

24. Department of Transportation, Federal Aviation Administration (N1–237–10–15, 1 item, 1 temporary item). Master files of an electronic information system used to track the workload of real estate and utility teams.

25. Department of Transportation, Federal Aviation Administration (N1–237–10–16, 3 items, 3 temporary items). Master files, reports, and other records associated with an electronic information system used to track activities related to safety inspections and investigations.

26. Department of the Treasury, Community Development Financial Institution (N1–56–09–12, 3 items, 3 temporary items). Master files, documentation, and outputs for an electronic information system used to track monetary awards to financial institutions for community development purposes.

27. Department of the Treasury, Office of Thrift Supervision (N1–483–10–1, 2 items, 2 temporary items). Extracted and summarized data from electronic information systems relating to branch office surveys and financial reporting. The systems from which these records are derived were previously approved for permanent retention.

Dated: December 14, 2009.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E9–30266 Filed 12–17–09; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF ENERGY

Office of Nuclear Energy

Notice of Renewal of the Nuclear Energy Advisory Committee

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, App., and section 102–3.65, Title 41, Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Advisory Committee has been renewed for a two-year period.

The Committee will provide advice to the Department of Energy's Office of Nuclear Energy on complex science and technical issues that arise in the planning, managing, and implementation of DOE's nuclear energy program. The Secretary of Energy has determined that renewal of the Nuclear Energy Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on December 11, 2009.

Carol A. Matthews,

Acting Committee Management Officer.

[FR Doc. E9–30163 Filed 12–17–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0137]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide, RG 1.205.

FOR FURTHER INFORMATION CONTACT: R. A. Jervey, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 215–7404 or e-mail to *Richard.Jervey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a revised 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.

Regulatory Guide 1.205, Revision 1, ''Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' was issued with a temporary identification as Draft Regulatory Guide, DG–1218. Regulatory Guide 1.205, Revision 1, incorporates the lessons-learned from ongoing review of the National Fire Protection Association Standard 805 pilot applications and endorses the recently released Revision 2 of Nuclear Energy Institute document NEI 04–02, ''Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program Under Title 10 of the Code of Federal Regulations Part 50.48(c).'' The technical information in the draft RG was developed by the Office of Nuclear Reactor Regulation staff in conjunction with agency stakeholders.

II. Further Information

In March 2009, DG–1218 was published with a public comment

period of 60 days from the issuance of the guide. The staff's responses to the public comments received are located in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession Number ML092460330. The summary regulatory analysis is located in ADAMS under Accession Number ML092730342. Electronic copies of RG 1.205 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 11555 Rockville Pike, Rockville, Maryland. 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) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 11th day of December 2009.

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–30103 Filed 12–17–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: (OMB Control No. 3206–0134; Standard Form 2803 and Standard Form 3108)

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. This information collection, ''Application to Make Deposit or Redeposit (CSRS)'' (OMB Control No. 3206–0134; Standard Form 2803) and ''Application to Make Service Credit Payment for Civilian Service (FERS)'' (OMB Control No. 3206–0134; Standard Form 3108) are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was subject to retirement deductions which were subsequently refunded to the applicant.

In addition to the current Federal employees who will use these forms, we expect to receive approximately 75 filings of each form from former Federal employees per year. This gives us a total of 150 filings. Each form takes approximately 30 minutes to complete. The annual burden is 75 hours.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500 and OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., 725 17th Street, NW., Room 10235, Washington, DC 20503.

For information regarding administrative coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–30166 Filed 12–17–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: OPM Form 1203–FX, Occupational Questionnaire, 3206–0040

AGENCY: U.S. Office of Personnel Management.

ACTION: 30–Day notice and request for comments.

SUMMARY: The Automated Services Management Group, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0040, Occupational Questionnaire, OPM Form 1203–FX. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on September 18, 2009 at Volume 74 FR 47981 allowing for a 60-day public comment period. We received 3 comments and responded to them. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 submissions of responses.

DATES: Comments are encouraged and will be accepted until January 19, 2010. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Occupational Questionnaire is an

optical scan form designed to collect applicant information and qualifications in a format suitable for automated processing and to create applicant records for an automated examining system. The 1203 series was commonly referred to as the ''Qualifications and Availability Form C.'' OPM has re-titled the series as ''Occupational Questionnaire'' to fit a more generic need. OPM uses this form to carry out its responsibility for open competitive examining for admission to the competitive service in accordance with section 3304, of title 5, United States Code.

Analysis

Agency: Automated Systems Management Group, Office of Personnel Management.

Title: Occupational Questionnaire, OPM Form 1203–FX.

OMB Number: 3260–0040.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 3,484,764.

Estimated Time per Respondent: 45 minutes.

Total Burden Hours: 2,613,573.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $468,280.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. E9–30167 Filed 12–17–09; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–0172; Standard Form 3104 and Standard Form 3104B]

Proposed Collection; Request for Comments Review of a Revised Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. ''Application for Death Benefits—FERS'' (OMB Control No. 3206–0172; Standard Form 3104), is used by persons applying for death benefits which may be payable under FERS because of the death of an employee, former employee, or retiree who was covered by FERS at the time of his/her death or separation from Federal Service. ''Documentation and Elections in Support of Application for Death Benefits when Deceased was an Employee at the Time of Death—FERS'' (OMB Control No. 3206–0172; Standard Form 3104B), is used by applicants for death benefits under FERS if the deceased was a Federal employee at the time of death.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

We estimate that approximately 9,607 SF 3104s will be processed annually and each form takes approximately 60 minutes to complete. An annual burden of 9,607 hours is estimated. We estimate that approximately 3,759 SF 3104Bs will be processed annually and each form takes approximately 60 minutes to complete. An annual burden of 3,759 hours is estimated. The total annual estimated burden is 13,366.

For copies of this proposal, contact Cyrus S. Benson on (202) 606–4808, FAX (202) 606–0910 or via e-mail to *Cyrus.Benson@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—James K. Freiert, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For information regarding administrative Coordination contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 4H28, Washington, DC 20415, (202) 606–0623.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. E9–30168 Filed 12–17–09; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2009–31; Order No. 357]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service filing of a change in prices for Priority Mail Contract 7 (MC2009–25). This notice addresses procedural steps associated with the filing.

DATES: Comments are due: December 21, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in ''FOR FURTHER INFORMATION CONTACT'' by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

II. Notice of Filing

III. Ordering Paragraphs

I. Introduction

On December 10, 2009, the Postal Service filed notice of a change in prices pursuant to an amendment to Priority Mail Contract 7.[1] The Notice includes three attachments: A redacted version of the amendment to Priority Mail Contract 7 as Attachment A; a certified statement of compliance with 39 U.S.C. 3633(a) as Attachment B; and an application for non-public treatment and a redacted version of the supporting financial documentation as Attachment C. In addition, the Postal Service filed the unredacted amendment to the contract and supporting financial documentation under seal. Notice at 1.

Substantively, the Notice seeks approval of an amendment to the prices for Priority Mail Contract 7 while keeping the contract's existing duration. Notice, Attachment A.[2] The Postal Service states that the price amendment will become effective the day the

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 7, December 10, 2009 (Notice).

[2] Priority Mail Contract 7 was originally approved, along with Priority Mail Contracts 6, and 8 through 10 in this docket by PRC Order No. 226, Order Concerning Priority Mail Contracts 6 through 10, June 19, 2009.

Commission completes its review of the Notice. Notice at 1.

II. Notice of Filings

The Commission reopens Docket No. CP2009–31 for consideration of the issues raised by the Notice. Interested persons may submit comments on whether these recent Postal Service's filings in this docket are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015. Comments are due no later than December 21, 2009. The public portions of these filings can be accessed via the Commission's Web site *(http://www.prc.gov)*.

The Commission appoints Paul L. Harrington to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2009–31 for consideration of the matters raised by the amendment to Priority Mail Contract 7.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public for this aspect of this docket.

3. Comments by interested persons in these proceedings are due no later than December 21, 2009.

4. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–30072 Filed 12–17–E9; 8:45 am]

BILLING CODE 7710–FW–S

POSTAL REGULATORY COMMISSION

[Docket No. CP2010-14; Order No. 356]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service filing to add a new Global Expedited Packages Services 2 product to the Competitive Product List. This notice addresses procedural steps associated with the filing.

DATES: Comments are due: December 21, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in ''FOR FURTHER INFORMATION CONTACT''by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

On December 10, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 2 (GEPS 2) contract.[1]

GEPS 2 provides volume-based incentives for mailers that send large volumes of Express Mail International (EMI) and/or Priority Mail International (PMI). The Postal Service believes the instant contract is functionally equivalent to the previously submitted GEPS 2 contracts and is supported by the Governors' Decision filed in Docket No. CP2008-4.[2] *Id.* at 1.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 290.[3] The term of the instant contract is 1 year from the date the Postal service notifies the customer that all necessary regulatory approvals have been received. Notice at 2.

In support of its Notice, the Postal Service filed four attachments as follows:

1. Attachment 1–an application for non-public treatment of materials to maintain the contract and supporting documents under seal;

2. Attachment 2–a redacted copy of Governors' Decision No. 08-7 which establishes prices and classifications for GEPS contracts, a description of applicable GEPS contracts, formulas for prices, an analysis and certification of the formulas and certification of the Governors' vote;

3. Attachment 3–a redacted copy of the contract, applicable annexes, and a provision to modify the mailer's tender requirements; and

Attachment 4–a certified statement required by 39 CFR 3015.5(c)(2).

Functional equivalency. The Postal Service asserts that the instant contract is functionally equivalent to the contract in Docket No. CP2009-50 and prior GEPS 2 contracts. *Id.* at 3-4. It also contends that the instant contract meets the requirements of Governors' Decision No. 08-7 for rates for GEPS contracts. *Id.* at 3. The Postal Service indicates that the instant contract differs from the contract in Docket No. CP2009-50 in two ways, namely, (a) Customer specific information, *e.g.*, the customer's name, address, and provisions clarifying tender locations; and (b) revisions intended to be included in all subsequent agreements. *Id.* at 3-4. The latter revisions address, for example, the treatment of confidential information and the availability of pickup service.[4]

The Postal Service contends that the instant contract satisfies the pricing formula and classification system established in Governors' Decision No. 08-7. Id. 2-3. It asserts that the instant contract and all GEPS 2 contracts have similar cost and market characteristics and is functionally equivalent in all relevant aspects. *Id.* at 5. The Postal Service concludes that this contract is in compliance with 39 U.S.C. 3633, and requests that this contract be included within the GEPS 2 product. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2010-14 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015. Comments are due no later than December 21, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2010-14 for consideration of the issues raised in this docket.

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[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, December 10, 2009 (Notice).

[2] *See* Docket No. CP2008-4, Notice of United States Postal Service of Governors' Decision Establishing Prices and Classifications for Global Expedited Package Services Contracts, May 20, 2008.

[3] *See* Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

[4] *Id.* at 4-5. The Postal Service filed revisions to the agreement under seal regarding certain Articles. It is not apparent that the revised provisions should be filed as non-public. Therefore, the Postal Service shall promptly file the revised provisions as public or provide justification for their treatment as non-public.

2. Comments by interested persons in these proceedings are due no later than December 21, 2009.

3. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Postal Service shall promptly clarify the revisions to the contract as set forth in this order.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. E9–30073 Filed 12–17–E9; 8:45 am]

BILLING CODE 7710–FW–S

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to a currently approved collection of information. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Repayment of Debt; OMB 3220–0169

When the Railroad Retirement Board (RRB) determines that an overpayment of Railroad Retirement Act (RRA) or Railroad Unemployment Insurance Act (RUIA) benefits has occurred, it initiates prompt action to notify the annuitant of the overpayment and to recover the money owed the RRB. To effect payment of a debt by credit card, the RRB currently utilizes Form G–421f, Repayment by Credit Card.

The RRB proposes minor non-burden impacting changes to Form G–421f. One form is completed by each respondent. Completion is voluntary. RRB procedures pertaining to benefit overpayment determinations and the recovery of such benefits are prescribed in 20 CFR 255 and 340.

Information Collection Request (ICR)

Title: Repayment of Debt.

OMB Control Number: OMB 3220–0169.

Form(s) submitted: G–421f.

Expiration date of current OMB clearance: 12/31/2009.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households.

Abstract: When the RRB determines that an overpayment of benefits under the Railroad Retirement Act or Railroad Unemployment Insurance Act has occurred, it initiates prompt action to notify the claimant of the overpayment and to recover the amount owed. The collection obtains information needed to allow for repayment by the claimant by credit card, in addition to the customary form of payment by check or money order.

Changes Proposed: The RRB proposes non-burden impacting editorial changes to Form G–421f.

The total burden estimate for the ICR is as follows:

Estimated annual number of respondents: 300.

Total annual responses: 300.

Total annual reporting hours: 25.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Patricia.Henaghan@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E9–30137 Filed 12–17–09; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 09/79–0454]

Emergence Capital Partners SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Emergence Capital Partners SBIC, L.P., 160 Bovet Road, Suite 300, San Mateo, CA 94402, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Emergence Capital Partners SBIC, L.P. proposes to provide equity financing to Lithium Technologies, Inc., 6121 Hollis Street Suite 4, Emeryville, CA 94608 (''Lithium''). The financing is contemplated for working capital and general operating purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Emergence Capital Partners, L.P. and Emergence Capital Associates, L.P., Associates of Emergence Capital Partners SBIC, L.P., own in aggregate more than ten percent of Lithium and therefore Lithium is considered an Associate of Emergence Capital Partners SBIC, L.P. Therefore, this transaction is considered *Financing an Associate,* requiring prior SBA approval.

Notice is hereby given that any interested person may submit written comments on the transaction within 15 days of the date of this publication to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 3, 2009.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. E9–30099 Filed 12–17–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61164; File No. S7–06–09]

Order Extending and Modifying Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request of Chicago Mercantile Exchange Inc. Related to Central Clearing of Credit Default Swaps, and Request for Comments

December 14, 2009.

I. Introduction

Over the past year, the Securities and Exchange Commission (''Commission'') has taken multiple actions to protect investors and ensure the integrity of the nation's securities markets, including actions [1] designed to address concerns related to the market in credit default swaps (''CDS'').[2] The over-the-counter (''OTC'') market for CDS has been a source of concern to us and other financial regulators, and we have recognized that facilitating the establishment of central counterparties (''CCPs'') for CDS can play an important role in reducing the counterparty risks inherent in the CDS market, and thus can help mitigate potential systemic impacts. We have therefore found that taking action to help foster the prompt development of CCPs, including granting temporary conditional exemptions from certain provisions of the Federal securities laws, is in the public interest.[3]

The Commission's authority over the OTC market for CDS is limited. Specifically, Section 3A of the Securities Exchange Act of 1934 (''Exchange Act'') limits the Commission's authority over swap agreements, as defined in Section 206A of the Gramm-Leach-Bliley Act.[4] For those CDS that are swap agreements, the exclusion from the definition of security in Section 3A of the Exchange Act, and related provisions, will continue to apply. The Commission's action today does not affect these CDS, and this Order does not apply to them. For those CDS that are not swap agreements (''non-excluded CDS''), the Commission's action today provides conditional exemptions from certain requirements of the Exchange Act.

The Commission believes that using well-regulated CCPs to clear transactions in CDS provides a number of benefits, by helping to promote efficiency and reduce risk in the CDS market and among its participants, contributing generally to the goal of market stability, and by requiring maintenance of records of CDS transactions that would aid the Commission's efforts to prevent and detect fraud and other abusive market practices.[5]

Earlier this year, the Commission granted temporary conditional exemptions to the Chicago Mercantile Exchange Inc. (''CME'') and Citadel Investment Group, L.L.C. (''Citadel'') from certain requirements under the Exchange Act with respect to their proposed activities in clearing and settling certain CDS,[6] as well as the proposed activities of certain other persons.[7] Those exemptions are scheduled to expire on December 14, 2009. CME has requested that the Commission extend the exemptions, and expand them to address the calculation of settlement prices for non-excluded CDS.[8]

Based on the facts presented and the representations made by CME,[9] and for the reasons discussed in this Order, and

[1] *See generally* Securities Exchange Act Release No. 60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by ICE Clear Europe Limited), Securities Exchange Act Release No. 60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009) (temporary exemptions in connection with CDS clearing by Eurex Clearing AG), Securities Exchange Act Release No. 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009) (temporary exemptions in connection with CDS clearing by Chicago Mercantile Exchange Inc.) (''CME Exemptive Order''), Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009) (temporary exemptions in connection with CDS clearing by ICE US Trust LLC (now ''ICE Trust U.S. LLC'')), Securities Exchange Act Release No. 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary exemptions in connection with CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) and other Commission actions discussed therein.

In addition, we have issued interim final temporary rules that provide exemptions under the Securities Act of 1933 and the Securities Exchange Act of 1934 for CDS to facilitate the operation of one or more central counterparties for the CDS market. *See* Securities Act Release No. 8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (initial approval); Securities Act Release No. 9063 (Sep. 14, 2009), 74 FR 47719 (Sep. 17, 2009) (extension until Nov. 30, 2010).

Further, the Commission has provided temporary exemptions in connection with Sections 5 and 6 of the Securities Exchange Act of 1934 for transactions in CDS. *See* Securities Exchange Act Release No. 59165 (Dec. 24, 2008), 74 FR 133 (Jan. 2, 2009) (initial exemption); Securities Exchange Act Release No. 60718 (Sep. 25, 2009), 74 FR 50862 (Oct. 1, 2009) (extension until Mar. 24, 2010).

[2] A CDS is a bilateral contract between two parties, known as counterparties. The value of this financial contract is based on underlying obligations of a single entity (''reference entity'') or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller to make payments under a CDS contract is triggered by a default or other credit event as to such entity or entities or such security or securities. Investors may use CDS for a variety of reasons, including to offset or insure against risk in their fixed-income portfolios, to take positions in bonds or in segments of the debt market as represented by an index, or to take positions on the volatility in credit spreads during times of economic uncertainty.

Growth in the CDS market has coincided with a significant rise in the types and number of entities participating in the CDS market. CDS were initially created to meet the demand of banking institutions looking to hedge and diversify the credit risk attendant to their lending activities. However, financial institutions such as insurance companies, pension funds, securities firms, and hedge funds have entered the CDS market.

[3] *See generally* actions referenced in note 1, *supra.*

[4] 15 U.S.C. 78c–1. Section 3A excludes both a non-security-based and a security-based swap agreement from the definition of ''security'' under Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10). Section 206A of the Gramm-Leach-Bliley Act defines a ''swap agreement'' as ''any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act * * *) * * * the material terms of which (other than price and quantity) are subject to individual negotiation.'' 15 U.S.C. 78c note.

[5] *See generally* actions referenced in note 1, *supra.*

[6] For purposes of this Order, ''Cleared CDS'' means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act (''CEA'') as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which: (i) The reference entity, the issuer of the reference security, or the reference security is one of the following: (A) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available; (B) a foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States; (C) a foreign sovereign debt security; (D) an asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or (E) an asset-backed security issued or guaranteed by the Federal National Mortgage Association (''Fannie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac''), or the Government National Mortgage Association (''Ginnie Mae''); or (ii) the reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (i). As discussed above, the Commission's action today does not affect CDS that are swap agreements under Section 206A of the Gramm-Leach-Bliley Act. *See* text at note 4, *supra.*

[7] *See* CME Exemptive Order, *supra* note 1.

[8] *See* Letter from Ann K. Shuman, Managing Director and Deputy General Counsel, CME, to Elizabeth Murphy, Secretary, Commission, Dec. 14, 2009 (''December 2009 request'').

[9] *See id.* The exemptions we are granting today are based on all of the representations made in the December 2009 request by CME. We recognize, however, that there could be legal uncertainty in the event that one or more of the underlying representations were to become inaccurate. Accordingly, if any of these exemptions were to become unavailable by reason of an underlying representation no longer being materially accurate, the legal status of existing open positions in non-excluded CDS that previously had been cleared pursuant to the exemptions would remain unchanged, but no new positions could be established pursuant to the exemptions until all of the underlying representations were again accurate.

subject to certain conditions, the Commission is extending temporarily the exemptions granted in the CME Exemptive Order, and is expanding them to accommodate CME's proposed settlement price calculation methodology for non-excluded CDS. Specifically, the Commission is extending the temporary conditional exemption granted to CME from clearing agency registration under Section 17A of the Exchange Act solely to perform the functions of a clearing agency for certain non-excluded CDS transactions. The Commission also is extending the temporary exemption for eligible contract participants and others from certain Exchange Act requirements with respect to non-excluded CDS cleared by CME. In addition, this order conditionally exempts on a temporary basis CME and certain of its clearing members from the registration requirements of Sections 5 and 6 of the Exchange Act solely in connection with the calculation of settlement prices for non-excluded CDS cleared by CME. These exemptions are temporary, subject to certain conditions, and will expire on March 31, 2010.

II. Discussion

A. Description of CME Proposal

The exemptive request by CME describes how its proposed arrangements for central clearing of CDS would operate, and makes representations about the safeguards associated with those arrangements, as described below:

1. CME Organization

CME Group Inc. (''CME Group''), a Delaware stock corporation, is the holding company for CME, as well as Board of Trade of the City Of Chicago, Inc., New York Mercantile Exchange, Inc., Commodity Exchange, Inc., and their subsidiaries.

CME is a designated contract market (''DCM''), regulated by the Commodity Futures Trading Commission (''CFTC''), for the trading of futures and options on futures contracts. In addition, CME Group operates its own clearing house, which is a division of CME. The CME clearing house is a derivatives clearing organization (''DCO'') regulated by the CFTC. The clearing house clears, settles, and guarantees the performance of all transactions matched through the execution facilities and on third party exchanges for which CME Group provides clearing services. The clearing house operates with the oversight of the Clearing House Risk Committee (''CHRC''). The CHRC is made up of a group of clearing member representatives who represent the interests of the clearing house as well as clearing members of CME Group. With respect to CDS clearing services, CME is establishing three additional committees:[10] (i) A CDS Advisory Board, which will have oversight for certain aspects of CME's CDS clearing services; (ii) a CDS Determinations Committee, which will be responsible for issuing determinations related to CDS contract terms; and (iii) a CDS Default Management Committee, which will advise the clearing house on matters relating to managing CDS portfolio positions in the event of an actual or threatened default involving CDS cleared contracts.

CME is required to comply with the eighteen CFTC Core Principles applicable to registered DCMs and the fourteen CFTC Core Principles applicable to DCOs.[11] The CFTC conducts regular audits or risk reviews of CME with respect to these Core Principles. CME is registered and in good standing with the CFTC. In addition, CME is notice registered with the Commission as a special purpose national securities exchange for the purpose of trading security futures products. In the U.K., CME is a Recognised Overseas Investment Exchange and a Recognised Overseas Clearing House, subject to regulation by the U.K. Financial Services Authority.

2. CME Central Counterparty Services for CDS

CME as part of its clearing services will be interposed as central counterparty for transactions in Cleared CDS. CME will provide clearing and settlement services for multiple platforms, including an electronic trade booking and migration platform operated by CME.[12] Specifically, CME will accept for clearing both (i) pre-existing non-standard trades that are submitted to clearing through CME's migration utility, a platform that provides data for converting non-standard terms to standard terms, allowing parties to non-standard transactions to substitute standard transactions for non-standard and submit the standard for clearing,[13] and (ii) transactions executed on standardized terms, which can be submitted to CME for clearing using CME's trade booking facility or a confirmation service.[14]

CME has no rule requiring an executing dealer to be a clearing member. In addition, CME will adopt a rule to confirm that there will be open access to its CDS clearing services for any execution venue or trade processing or confirmation service that desires to facilitate the submission of CDS transactions to CME for clearing, subject to CME's normal operational requirements applied to all such third-party services, including the requirement for a CME clearing member guaranty of all transactions submitted to clearing.

CME clearing and settlement of Cleared CDS will operate using the established systems, procedures, and financial safeguards that stand behind trading in CME's primary futures market, and such activities will be subject to CFTC oversight of risk management and collateralization procedures. CME Rulebook Chapter 8–F sets forth the rules governing clearing and settlement of all products, instruments, and contracts in OTC derivatives, including but not limited to CDS contracts, swaps, and forward rate agreements that the CME clearinghouse has designated as eligible for clearing.

3. CME Risk Management

CME clearing members that are broker-dealers or futures commission merchants (''FCMs'') maintain capital and liquidity in accordance with relevant SEC and CFTC rules and

[10] These committees will generally have equal authority to the CHRC, but with narrower mandates and oversight that is specific to CDS. In some cases, the approval of the new CDS Advisory Board will be required, in addition to the approval of the CHRC, with respect to certain changes to CME's risk management of CDS. The CDS Advisory Board will also have approval rights with respect to certain other matters, such as the launch of clearing services for a new CDS product using the existing CDS financial safeguards package.

[11] The DCM and DCO Core Principles are set forth in 7 U.S.C. 7(b), 7a–1(c)(2)(A).

[12] CME's clearing services would be available only to persons that satisfy the definition of an ''eligible contract participant'' in Section 1a(12) of the CEA (other than paragraph (C) thereof). In addition, each participant must be a clearing member of CME or have a clearing relationship with a CME clearing member that agrees to assume responsibility for the participant's CDS contracts cleared by CME. Initially, CME would offer CDS that mirror as closely as possible the terms of existing OTC CDS. The coupons and maturities would be standardized to the extent necessary to permit centralized clearing.

[13] Non-standard trades that are migrated to CME would ultimately be converted to a standard, centrally cleared contract. Migration may only occur if both counterparties to a trade agree to the process and both are clearing members or have the appropriate relationship with a clearing member. To facilitate operational efficiency, CME would also supply participants a data file of the original bilateral positions that were accepted into clearing via the migration process, so that participants may send appropriate exit records to the DTCC Trade Information Warehouse.

[14] Trades may be submitted using Bloomberg's VCON confirmation service as of the initial launch date. CME is also working with other confirmation services to connect to CME clearing for submission of CDS transactions. *See* December 2009 request, *supra* note 8.

regulations, respectively. In addition, CME has requirements for minimum capital contribution, contribution to the guaranty fund based on risk factors, maintenance margin, and mark to market with immediate payment of losses applicable to clearing member firms.

CME has adopted a risk-based capital requirement. Capital requirements are monitored by CME's Audit Department and vary to reflect the risk of each clearing member's positions as well as CME's assessment of each clearing member's internal controls, risk management policies, and back office operations. CME has established additional capital and guaranty fund contribution requirements for clearing members authorized to clear CDS. To clear CDS, whether for proprietary or customer accounts, a clearing member must maintain $500 million in adjusted net capital.[15] CDS clearing members must also make initial guaranty fund contributions with respect to CDS that will be a minimum of $50 million each.[16] Those CDS clearing members with adjusted net capital of less than $1 billion must also maintain excess margin with the clearing house that is equal to their guaranty fund contributions; CDS clearing members with less than $5 billion in adjusted net capital are also subject to daily capital reporting.

Clearing members also have to manage appropriate requirements with respect to their customers. CME Rule 982 requires clearing members to establish written risk management policies and procedures, including monitoring the risks assumed by specific customers. To facilitate such controls with respect to CDS transactions, CME's clearing systems includes functionality that permits clearing members to register customer accounts and specify customer credit limits.

Customer account reporting will allow CME to view the positions held by individual accounts. Clearing members will be required to register their proprietary and customer accounts in CME's EDB system, and report new customer positions through EDB on an ongoing basis. Changes in positions of each account will be analyzed throughout the day, and compared to intraday price movements, to monitor any accounts that may develop significant losses due to market moves. In addition, significant changes in positions from day to day will be analyzed and reported to CME clearing house senior management.

In designing its margining methodology for CDS, CME conducted extensive testing of historical CDS data, stress testing the different CDS margin factors to capture moves beyond the 99% standard on its multi-factor risk model. The overall financial safeguards package for CDS has also been designed using concentration types of margining and routine stress testing. On an ongoing basis, CME will daily back-test the CDS margin factor parameters to ensure that they are providing the desired level of coverage. CME will also review on a daily basis the margin collected by CME on CDS portfolios and compare those amounts to next-day market moves so that actual portfolio effects can be determined and gauged against the margin coverage. In addition, CME will evaluate the concentration of CDS positions beyond the margin factors and compare them against overall open interest and liquidity in the CDS market.

CME will extend its scenario-based stress testing techniques for concentration margining to Cleared CDS. The concentration stress test results will be evaluated relative to excess adjusted net capital for each segregated pool. If the hypothetical losses exceed the excess adjusted net capital for a clearing member's segregated pool, then an additional margin charge will be applied to the clearing member's position. The additional margin charge will be calculated based on the magnitude of the hypothetical losses in excess of the clearing member's excess adjusted net capital.

CME determines the acceptability of different collateral types and determines appropriate haircuts.[17] Collateral requirements for Cleared CDS will appropriately reflect the specific risks of Cleared CDS, including jump-to-default and the consequences of a liquidity event caused by the defaults.

4. Settlement Prices

CME will determine settlement prices each business day for each eligible product based upon pricing data from multiple origins. Sources of pricing data will include: (1) Prices of OTC transactions submitted to CME for clearing; (2) indicative settlement prices contributed by CME CDS clearing members; and (3) pricing information licensed by CME from other third-party sources. The pricing data will be processed using standard validation, aggregation, and valuation analytics. Updated settlement prices will be made available to clearing members on their open positions on a regular basis (at least once a day, or more frequently in case of sudden market moves). As part of the CDS clearing process, CME will periodically require CDS clearing members to trade at prices generated by their indicative settlement prices where those indicative settlement prices generate crossed bids and offers, pursuant to CME's price quality auction methodology.[18]

5. Member Default

If a clearing member is troubled (*i.e.,* if it fails to meet minimum financial requirements or its financial or operational condition may jeopardize the integrity of the CME, or negatively impact the financial markets), CME may take action pursuant to CME Rule 974 (Failure to Meet Minimum Financial Requirements) or 975 (Emergency Financial Conditions). In the event of a default by a clearing member of CME, the process would be governed by applicable CME rules.[19]

In the event of a member default, CME may access its financial safeguards package as necessary. CME's financial safeguard package is a combination of each clearing member's collateral on deposit to support its positions, the collateral of its customers to support their positions, CME surplus funds,

[15] CDS clearing members that are structured as hedge funds must also have a minimum of $5 billion in net assets under management.

[16] During an initial phase starting as early as December 15, 2009, a limited number of CDS clearing members and customers that have been engaged in active testing with CME will be eligible to participate, and participating clearing members will make guaranty fund contributions of $50 million each. Clearing will be restricted to a small set of index products, and CME will carefully limit risk exposures. Thereafter, participation will be open to all eligible clearing members and market participants. At that time, the minimum initial or additional guaranty fund contribution per CDS clearing member will be equal to the greater of $50 million or $500 million divided by the total number of CDS clearing members.

[17] A list of acceptable collateral and applicable haircuts is available at *http://www.cme.com.*

[18] Each trading day CME will randomly select 5% of its CDS product available for clearing (but at least one product) and will randomly select one tenor for each such product to evaluate for crossed bids and offers pursuant to CME's price quality auction methodology.

[19] *See, e.g.,* CME Rulebook Chapter 8–F (Over-the-Counter Derivative Clearing), including but not limited to Rules 8F06 (Clearing Member Default), 8F07 (Guaranty Fund Deposit), 8F13 (Insolvency and Liquidation), and 8F25 (Default Management Committee). Chapter 8–F further incorporates the general CME Rules relating to defaults, including but not limited to Rules 802 (Protection of Clearing House), 913 (Withdrawal From Clearing Membership), 974 (Failure to Meet Minimum Financial Requirements), 975 (Emergency Financial Conditions), 976 (Suspension of Clearing Members), 978 (Open Trades of Suspended Clearing Members), and 979 (Suspended or Expelled Clearing Members).

security deposits, and CME's assessment powers.[20]

6. Customer Rules and Other Requirements

Prior to any issuance of an order from the CFTC under Section 4d of the CEA (''4d order''), described below, all Cleared CDS submitted to CME for clearing for the account of a clearing member's customer must be assigned and held in an account subject to CFTC Regulation 30.7.[21] Regulation 30.7 requires customer positions and property to be separately held and accounted for from the positions and property of the FCM, and customer property to be deposited under an account name that clearly identifies it as customer property. CME Rule 8F03 also provides that ''[a]ll collateral deposited as performance bond to support positions in such Regulation § 30.7 account and all positions, collateral or cash in such account shall be segregated from the Clearing Member's proprietary account.'' [22] CME notes, however, that ''[n]either the CFTC nor the courts have issued an interpretation with regard to the bankruptcy protections that would be afforded to customers clearing OTC positions in 30.7 accounts, and it is therefore unclear whether they would receive the same protections as foreign futures customers.'' [23]

In the event the CFTC issues a 4d order,[24] the segregation and protection of customer funds and property would be controlled by Section 4d of the CEA and the related regulations; all funds and property received from customers of FCMs in connection with purchasing, selling, or holding CDS positions would be subject to the requirements of CFTC Regulation 1.20, *et seq.* promulgated under Section 4d. This regulation requires that customer positions and property be separately accounted for and segregated from the positions and property of the FCM. Customer property would be deposited under an account name that clearly identifies it as such and shows it is appropriately segregated as required by the CEA and Regulation 1.20, *et seq.*

In addition, customer margin requirements for a broker-dealer are generally set by the broker-dealer's self-regulatory organizations (*e.g.,* the Financial Industry Regulatory Authority, or FINRA). One purpose for customer margin requirements is to assure that broker-dealers collect sufficient margin from customers to protect the broker-dealer in the event that an adverse price move causes a customer default, leaving the broker-dealer with responsibility for the transaction. FINRA has amended its customer margin rule to implement an interim pilot program with respect to margin requirements for transactions in CDS.[25]

B. Extended Temporary Conditional Exemption From Clearing Agency Registration Requirement

On March 13, 2009, in connection with its efforts to facilitate the establishment of one or more CCPs for Cleared CDS, the Commission issued the CME Exemptive Order, conditionally exempting CME from clearing agency registration under Section 17A of the Exchange Act on a temporary basis.[26] Subject to the conditions in that Order, CME is permitted to act as a CCP for Cleared CDS by novating trades of non-excluded CDS that are securities and generating money and settlement obligations for participants without having to register with the Commission as a clearing agency. The CME Exemptive Order expires on December 14, 2009. Pursuant to its authority under Section 36 of the Exchange Act,[27] for the reasons described herein, the Commission is extending the exemption granted in that order until March 31, 2010, subject to certain conditions.

In the CME Exemptive Order, the Commission recognized the need to ensure the prompt establishment of CME as a CCP for CDS transactions. The Commission also recognized the need to ensure that important elements of Section 17A of the Exchange Act, which sets forth the framework for the regulation and operation of the U.S. clearance and settlement system for securities, apply to the non-excluded CDS market. Accordingly, the temporary exemption in the CME Exemptive Order was subject to a number of conditions designed to enable Commission staff to monitor CME's clearance and settlement of CDS transactions.[28]

The temporary exemption was based, in part, on CME's representation that it met the standards set forth in the Committee on Payment and Settlement Systems (''CPSS'') and International Organization of Securities Commissions (''IOSCO'') report entitled: *Recommendation for Central Counterparties* (''RCCP'').[29] The RCCP establishes a framework that requires a CCP to have: (i) The ability to facilitate the prompt and accurate clearance and settlement of CDS transactions and to safeguard its users' assets; and (ii) sound risk management, including the ability to appropriately determine and collect clearing fund and monitor its users' trading. This framework is generally consistent with the requirements of Section 17A of the Exchange Act.

The Commission believes that continuing to facilitate the central clearing of CDS transactions—including customer CDS transactions—through a temporary conditional exemption from Section 17A would provide important risk management and systemic benefits by facilitating the prompt establishment of CCP clearance and settlement services. Accordingly, and consistent with our findings in the CME Exemptive Order, we find pursuant to Section 36 of the Exchange Act that it is necessary and appropriate in the public interest

[20] CME indicates that, excluding performance bond collateral supporting open positions, which totals approximately $85 billion, the total financial safeguards package is greater than $7.5 billion, comprised of: (1) CME surplus funds of $177 million; (2) clearing member security deposits of approximately $1.973 billion; and (3) assessment powers of approximately $5.426 billion (as of September 30, 2009). Clearing members that clear Cleared CDS would be subject to additional guaranty fund deposit requirements. Furthermore, the calculation of that portion of a clearing member's security deposit that is related to the risk of its CDS position would be scaled upward by a factor of four.

[21] 17 CFR 30.7.

[22] As discussed below, the exemptions related to CDS customer clearing require CME clearing members to satisfy additional conditions, including conditions specific to the use of a 30.7 account.

[23] December 2009 request, *supra* note 8.

[24] CME petitioned the CFTC on June 15, 2009 for a 4d order covering cleared CDS transactions. *See* December 2009 request, *supra* note 8. More specifically, CME's petition requested that the CFTC issue an Order pursuant to Section 4d that would permit CME and its clearing members that are FCMs to commingle customer funds used to margin, secure, or guarantee CDS cleared by CME with other funds held in segregated accounts maintained in accordance with Section 4d of the CEA and CFTC regulations. *See http://www.cftc.gov/stellent/groups/public/@requestsandactions/documents/ifdocs/cme4drequestcds.pdf.*

[25] *See* Securities Exchange Act No. 60722 (Sept. 25, 2009), 74 FR 50856 (Oct. 1, 2009) (File No. SR–FINRA–2009–063) (extending the implementation of FINRA Rule 4240, Margin Requirements for Credit Default Swaps, to Nov. 30, 2010).

[26] *See supra,* note 1.

[27] 15 U.S.C. 78mm. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation, or order, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[28] *See* Securities Exchange Act Release No. 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009).

[29] The RCCP was drafted by a joint task force (''Task Force'') composed of representative members of IOSCO and CPSS and published in November 2004. The Task Force consisted of securities regulators and central bankers from 19 countries and the European Union. The U.S. representatives on the Task Force included staff from the Commission, the Federal Reserve Board, and the CFTC.

and is consistent with the protection of investors for the Commission to extend, until March 31, 2010, CME's exemption provided from the clearing agency registration requirements of Section 17A, subject to certain conditions.

In granting this exemption, we are balancing the aim of facilitating CME's service as a CCP for non-excluded CDS transactions with ensuring that important elements of Commission oversight are applied to the non-excluded CDS market. The continued use of temporary exemptions will permit the Commission to continue to develop direct experience with the non-excluded CDS market. During the extended exemptive period, the Commission will continue to monitor closely the impact of the CCPs on this market. In particular, the Commission will seek to assure itself that CME has sufficient risk management controls in place and does not act in an anticompetitive manner or indirectly facilitate anticompetitive behavior with respect to fees charged to members, the dissemination of market data, and the access to clearing services by independent CDS exchanges or CDS trading platforms.

This temporary extension of the CME Exemptive Order also is designed to assure that—as CME has represented—information will be available to market participants about the terms of the CDS cleared by CME, the creditworthiness of CME or any guarantor, and the clearance and settlement process for the CDS.[30] The Commission believes operation of CME consistent with the conditions of the Order will facilitate the availability to market participants of information that should enable them to make better informed investment decisions and better value and evaluate their Cleared CDS and counterparty exposures relative to a market that is not centrally cleared.

This temporary extension of the CME Exemptive Order is subject to a number of conditions that are designed to enable Commission staff to monitor CME's clearance and settlement of CDS transactions and help reduce risk in the CDS market. These conditions require that CME: (i) Make available on its Web site its annual audited financial statements; (ii) preserve records related to the conduct of its Cleared CDS clearance and settlement services for at least five years (in an easily accessible place for the first two years); (iii) provide information relating to its Cleared CDS clearance and settlement services to the Commission and provide access to the Commission to conduct on-site inspections of facilities, records, and personnel related to its Cleared CDS clearance and settlement services; (iv) notify the Commission on a monthly basis about material disciplinary actions taken against any of its members utilizing its Cleared CDS clearance and settlement services, and about the involuntary termination of the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services; (v) provide the Commission with changes to rules, procedures, and any other material events affecting its Cleared CDS clearance and settlement services not less than one day prior to effectiveness or implementation of such rule changes, or in exigent circumstances, as promptly as reasonably practicable under the circumstances; (vi) provide the Commission with reports prepared by independent audit personnel that are generated in accordance with risk assessment of the areas set forth in the Commission's Automation Review Policy Statements[31] and its annual audited financial statements prepared by independent audit personnel; and (vii) report all significant systems outages to the Commission within specified timeframes.

In addition, this temporary extension of the CME Exemptive Order is conditioned on CME, directly or indirectly, making available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate settlement variation or margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

As a CCP, CME will collect and process information about CDS transactions, prices, and positions from all of its participants. With this information, it will calculate and disseminate current values for open positions for the purpose of setting appropriate margin levels. The availability of such information can improve fairness, efficiency, and competitiveness of the market—all of which enhance investor protection and facilitate capital formation. Moreover, with pricing and valuation information relating to Cleared CDS, market participants would be able to derive information about underlying securities and indexes. This may improve the efficiency and effectiveness of the securities markets by allowing investors to better understand credit conditions generally.

C. Temporary Conditional Exemption From Exchange Registration Requirements

CME has requested that the Commission expand its exemptive relief to include a temporary conditional exemption for CME from the requirements of Sections 5 and 6 of the Exchange Act, and the rules and regulations thereunder, in connection with CME's methodology for determining CDS settlement prices, including its price quality auction methodology. Section 5 of the Exchange Act contains certain restrictions relating to the registration of national securities exchanges,[32] while Section 6 provides the procedures for registering as a national securities exchange.[33]

The temporary exemption would facilitate the establishment of CME's settlement price process. CME represents that updated settlement prices will be made available to clearing members on their open positions on a regular basis (at least once a day, or more frequently in case of sudden market moves). As part of the CDS clearing process, CME will periodically require CDS clearing members to trade at prices generated by their indicative settlement prices where those indicative settlement prices generate crossed bids and offers, pursuant to CME's price quality auction methodology.[34]

As discussed above, we have found in general that it is necessary or appropriate in the public interest, and is

[30] The Commission believes that it is important in the CDS market, as in the securities market generally, that parties to transactions have access to financial information that would allow them to evaluate appropriately the risks relating to a particular investment and make more informed investment decisions. *See generally* Policy Statement on Financial Market Developments, The President's Working Group on Financial Markets, March 13, 2008, available at: *http://www.treas.gov/press/releases/reports/pwgpolicystatemktturmoil_03122008.pdf.*

[31] *See* Automated Systems of Self-Regulatory Organization, Exchange Act Release No. 27445 (Nov. 16, 1989), File No. S7–29–89, and Automated Systems of Self-Regulatory Organization (II), Exchange Act Release No. 29185 (May 9, 1991), File No. S7–12–91.

[32] In particular, Section 5 provides:

It shall be unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange * * * to effect any transaction in a security, or to report any such transactions, unless such exchange (1) is registered as a national securities exchange under section 6 of [the Exchange Act], or (2) is exempted from such registration * * * by reason of the limited volume of transactions effected on such exchange * * * 15 U.S.C. 78e.

[33] 15 U.S.C. 78f. Section 6 of the Exchange Act also sets forth various requirements to which a national securities exchange is subject.

[34] *See* note 18, *supra.*

consistent with the protection of investors, to facilitate CDS clearing by CME. Consistent with that finding—and in reliance on CME's representation that the settlement pricing process, including the periodically required trading, is part of its clearing process—we further find that it is necessary or appropriate in the public interest, and is consistent with the protection of investors to grant, pursuant to Section 36 of the Exchange Act, a temporary exemption until March 31, 2010, to CME from Sections 5 and 6 of the Exchange Act in connection with its calculation of settlement variation prices for open positions in Cleared CDS, and a temporary exemption to CME clearing members from Section 5 with respect to such trading activity, subject to certain conditions.

The temporary exemption for CME is subject to three conditions. First, CME must report the following information with respect to its determination of daily settlement prices for cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports for as long as CME offers CDS clearing services and for a period of at least five years thereafter:

- The total dollar volume of CDS transactions executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index; and
- The total unit volume or notional amount executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index.

Reporting of this information will assist the Commission in carrying out its responsibility to supervise and regulate the securities markets.

Second, CME must establish and maintain adequate safeguards and procedures to protect participants' confidential trading information related to Cleared CDS. Such safeguards and procedures shall include: (a) Limiting access to the confidential trading information of participants to those CME employees who have a need to access such information in connection with the provision of CME CDS clearing services or who are responsible for compliance with this exemption or any other applicable rules; and (b) implementing policies and procedures for CME employees with access to such information with respect to trading for their own accounts. CME must adopt and implement adequate oversight procedures to ensure that the policies and procedures established pursuant to this condition are followed. This condition is designed to prevent any misuse of CME clearing member trading information that may be available to CME in connection with the daily settlement variation of open positions in Cleared CDS. This should strengthen confidence in CME as a CCP for CDS, thus promoting participation in central clearing of CDS.

Third, CME must comply with the conditions to the temporary exemption from Section 17A of the Exchange Act in this Order. This exemption from exchange registration is granted in the context of our goal of facilitating CME's ability to act as a CCP for non-excluded CDS. We note that CME has represented that given the requirement for CDS clearing members periodically to trade at prices generated by their indicative settlement prices where those indicative settlement prices generate crossed bids and offers, pursuant to CME's price quality auction methodology, its price auction methodology will be part of its CDS clearing process.

D. Extended Temporary Conditional General Exemption for CME and Certain Eligible Contract Participants

As we recognized when we initially provided temporary conditional exemptions in connection with CDS clearing by CME, applying the full panoply of Exchange Act requirements to participants in transactions in non-excluded CDS likely would deter some participants from using CCPs to clear CDS transactions. We also recognized that it is important that the antifraud provisions of the Exchange Act apply to transactions in non-excluded CDS, particularly given that OTC transactions subject to individual negotiation that qualify as security-based swap agreements already are subject to those provisions.[35]

As a result, we concluded that it is appropriate in the public interest and consistent with the protection of investors temporarily to apply substantially the same framework to transactions by market participants in non-excluded CDS that applies to transactions in security-based swap agreements. Consistent with that conclusion, we temporarily exempted CME and certain eligible contract participants from a number of Exchange Act requirements, while excluding certain enforcement-related and other provisions from the scope of the exemption.

We believe that continuing to facilitate the central clearing of CDS transactions by CME through this type of temporary conditional exemption will provide important risk management and systemic benefits. We also believe that facilitating the central clearing of customer CDS transactions, subject to the conditions in this Order, will provide an opportunity for the customers of CME clearing members to control counterparty risk.

Accordingly, pursuant to Section 36 of the Exchange Act, the Commission finds that it is necessary or appropriate in the public interest and is consistent with the protection of investors to grant an exemption until March 31, 2010, from the requirements of the Exchange Act discussed below, subject to certain conditions. This temporary exemption applies to CME and to eligible contract participants[36] other than: Eligible contract participants that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons;[37] eligible contract

[35] While Section 3A of the Exchange Act excludes ''swap agreements'' from the definition of ''security,'' certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. *See* (a) paragraphs (2) through (5) of Section 9(a), 15 U.S.C. 78i(a), prohibiting the manipulation of security prices; (b) Section 10(b), 15 U.S.C. 78j(b), and underlying rules prohibiting fraud, manipulation or insider trading (but not prophylactic reporting or recordkeeping requirements); (c) Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices; (d) Sections 16(a) and (b), 15 U.S.C. 78p(a) and (b), which address disclosure by directors, officers and principal stockholders, and short-swing trading by those persons, and rules with respect to reporting requirements under Section 16(a); (e) Section 20(d), 15 U.S.C. 78t(d), providing for antifraud liability in connection with certain derivative transactions; and (f) Section 21A(a)(1), 15 U.S.C. 78u–1(a)(1), related to the Commission's authority to impose civil penalties for insider trading violations.

''Security-based swap agreement'' is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

[36] This exemption in general applies to eligible contract participants, as defined in Section 1a(12) of the CEA as in effect on the date of this Order, other than persons that are eligible contract participants under paragraph (C) of that section.

[37] Solely for purposes of this requirement, an eligible contract participant would not be viewed as receiving or holding funds or securities for purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons, if the other persons involved in the transaction would not be considered ''customers'' of the eligible contract participant in a parallel manner when certain persons would not be considered ''customers'' of a broker-dealer under Exchange Act Rule 15c3–3(a)(1). For these purposes, and for the purpose of the definition of ''Cleared CDS,'' the terms ''purchasing'' and ''selling'' mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a Cleared CDS, as the context may require. This is consistent with the meaning of the terms ''purchase'' or ''sale'' under the Exchange Act in the context of security-based swap

Continued

participants that are self-regulatory organizations; or eligible contract participants that are registered brokers or dealers.[38]

As before, under this temporary exemption, and solely with respect to Cleared CDS, those persons generally are exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements. Thus, those persons will still be subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements.[39] In addition, all provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions remain applicable.[40] In this way, the temporary exemption applies the same Exchange Act requirements in connection with non-excluded CDS as apply in connection with OTC credit default swaps that are security-based swap agreements.

Consistent with our earlier exemptions, and for the same reasons, this temporary exemption also does not extend to: the exchange registration requirements of Exchange Act Sections 5 and 6;[41] the clearing agency registration requirements of Exchange Act Section 17A; the requirements of Exchange Act Sections 12, 13, 14, 15(d), and 16;[42] the Commission's administrative proceeding authority under Sections 15(b)(4) and (b)(6);[43] or certain provisions related to government securities.[44] CME clearing members relying on this temporary exemption must be in material compliance with CME rules.

E. Conditional Temporary Exemption for Certain Clearing Members of CME

In the CME Exemptive Order, we granted a conditional temporary exemption from particular Exchange Act requirements to certain clearing members of CME that hold funds and securities of others in connection with Cleared CDS transactions. Absent an exception or exemption, persons that effect transactions in non-excluded CDS that are securities may be required to register as broker-dealers pursuant to Section 15(a)(1) of the Exchange Act.[45] Certain reporting and other requirements of the Exchange Act may also apply to such persons, as broker-dealers, regardless of whether they are registered with the Commission.

In granting that exemption, we noted that it is consistent with our investor protection mandate to require securities intermediaries that receive or hold funds and securities on behalf of others to comply with standards that safeguard the interests of their customers.[46] We also recognized, however, that requiring intermediaries that receive or hold funds and securities on behalf of customers in connection with transactions in non-excluded CDS to register as broker-dealers may deter the use of CCPs in CDS transactions, to the detriment of the markets and market participants generally. We concluded that those factors, along with certain representations by CME, argued in favor of flexibility in applying the requirements of the Exchange Act to these intermediaries. As a result, we provided a temporary conditional exemption to any CME clearing member registered as an FCM pursuant to Section 4f(a)(1) of the CEA (but not registered as a broker-dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those members generally were exempted from provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements.

When CME requested the exemptions that we granted in March, it stated that pending a receipt of an order from the CFTC pursuant to Section 4d of the CEA and related regulations, to permit CME

agreements. *See* Exchange Act Section 3A(b)(4). A separate temporary conditional exemption addresses members of CME that hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. *See* Part II.E, *infra.*

[38] A separate temporary exemption addresses the Cleared CDS activities of registered-broker-dealers. *See* Part II.F, *infra.* Solely for purposes of this Order, a registered broker-dealer, or a broker or dealer registered under Section 15(b) of the Exchange Act, does not refer to someone that would otherwise be required to register as a broker or dealer solely as a result of activities in Cleared CDS in compliance with this Order.

[39] *See* note 35, *supra.*

[40] Thus, for example, the Commission retains the ability to investigate potential violations and bring enforcement actions in the Federal courts as well as in administrative proceedings, and to seek the full panoply of remedies available in such cases.

[41] These are subject to a separate temporary class exemption. *See* note 1, *supra.* A national securities exchange that effects transactions in Cleared CDS would continue to be required to comply with all requirements under the Exchange Act applicable to such transactions. A national securities exchange could form subsidiaries or affiliates that operate exchanges exempt under that order. Any subsidiary or affiliate of a registered exchange could not integrate, or otherwise link, the exempt CDS exchange with the registered exchange including the premises or property of such exchange for effecting or reporting a transaction without being considered a ''facility of the exchange.'' *See* Section 3(a)(2), 15 U.S.C. 78c(a)(2).

This Order also includes a separate temporary exemption from Sections 5 and 6 in connection with the settlement price calculation methodology of CME, discussed above. *See* Part II.C, *supra.*

[42] 15 U.S.C. 78*l,* 78m, 78n, 78o(d), 78p. Eligible contract participants and other persons instead should refer to the interim final temporary rules issued by the Commission. *See* note 1, *supra.*

[43] Exchange Act Sections 15(b)(4) and 15(b)(6), 15 U.S.C. 78o(b)(4) and (b)(6), grant the Commission authority to take action against broker-dealers and associated persons in certain situations. Accordingly, while this exemption generally extends to persons that act as inter-dealer brokers in the market for Cleared CDS and do not hold funds or securities for others, such inter-dealer brokers may be subject to actions under Sections 15(b)(4) and (b)(6) of the Exchange Act. In addition, such inter-dealer brokers may be subject to actions under Exchange Act Section 15(c)(1), 15 U.S.C. 78o(c)(1), which prohibits brokers and dealers from using manipulative or deceptive devices. As noted above, Section 15(c)(1) explicitly applies to security-based swap agreements. Sections 15(b)(4), 15(b)(6), and 15(c)(1), of course, would not apply to persons subject to this exemption who do not act as broker-dealers or associated persons of broker-dealers.

[44] This exemption specifically does not extend to the Exchange Act provisions applicable to government securities, as set forth in Section 15C, 15 U.S.C. 78o–5, and its underlying rules and regulations; nor does the exemption extend to related definitions found at paragraphs (42) through (45) of Section 3(a), 15 U.S.C. 78c(a). The Commission does not have authority under Section 36 to issue exemptions in connection with those provisions. *See* Exchange Act Section 36(b), 15 U.S.C. 78mm(b).

[45] 15 U.S.C. 78o(a)(1). This section generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.

Section 3(a)(4) of the Exchange Act generally defines a ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others,'' but provides 11 exceptions for certain bank securities activities. 15 U.S.C. 78c(a)(4). Section 3(a)(5) of the Exchange Act generally defines a ''dealer'' as ''any person engaged in the business of buying and selling securities for his own account,'' but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(5). Exchange Act Section 3(a)(6) defines a ''bank'' as a bank or savings association that is directly supervised and examined by state or Federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a Federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6).

[46] Registered broker-dealers are required to segregate assets held on behalf of customers from proprietary assets, because segregation will assist customers in recovering assets in the event the intermediary fails. Absent such segregation, collateral could be used by an intermediary to fund its own business, and could be attached to satisfy the intermediary's debts were it to fail. Moreover, the maintenance of adequate capital and liquidity protects customers, CCPs, and other market participants. Adequate books and records (including both transactional and position records) are necessary to facilitate day to day operations as well as to help resolve situations in which an intermediary fails and either a regulatory authority or receiver is forced to liquidate the firm. Appropriate records also are necessary to allow examiners to review for improper activities, such as insider trading or fraud.

and its members to establish segregated accounts for holding collateral posted by cleared CDS customers, FCMs would hold customer collateral within accounts established pursuant to CFTC Rule 30.7. Rule 30.7 provides a mechanism for establishing accounts for holding collateral posted by foreign futures customers.

We understand that the protections associated with using CFTC Rule 30.7 to segregate collateral associated with over-the-counter derivatives is untested,[47] and thus less certain than the protections that would be afforded to collateral protected by Section 4d. Also, we note that the CFTC has proposed a rule—not yet adopted—that would provide for the establishment of an account class, with respect to the bankruptcy of a commodity broker that is an FCM, that would be applicable to positions in cleared over-the-counter derivatives and collateral securing such positions.[48]

In light of the risk management and systemic benefits in continuing to facilitate CDS clearing by CME, while promoting customer protection in connection with those CDS transactions, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to extend this temporary conditional exemption for certain CME clearing members from certain requirements of the Exchange Act in connection with Cleared CDS until March 31, 2010. As discussed below, this exemption has been modified in certain respects from the exemption that we previously granted to CME clearing members that receive or hold customer funds or securities in connection with Cleared CDS.

As before, this revised exemption will be available to any CME clearing member that is also an FCM (other than one that either is registered pursuant to Section 4f(a)(2) or is registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons. Solely with respect to Cleared CDS, those members generally will be exempt from those provisions of the Exchange Act and the underlying rules and regulations that do not apply to security-based swap agreements. As with the exemption discussed above that is applicable to CME and certain eligible contract participants, and for the same reasons, this exemption for CME clearing members that receive or hold funds and securities does not extend to Exchange Act provisions that explicitly apply in connection with security-based swap agreements,[49] or to related enforcement authority provisions.[50] As with the exemption discussed above, we also are not exempting those members from Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16, and 17A of the Exchange Act.[51]

This temporary exemption is subject to the member complying with conditions that are important for protecting customer funds and securities. Any CME clearing member relying on this exemption must be in material compliance with the rules of CME (including Rules 971 and 973 relating to Segregation and Secured Requirements and Customer Accounts with the Clearing House). Such clearing members also must be in material compliance with applicable laws and regulations relating to capital, liquidity, and segregation of customers'[52] funds and securities (and related books and records provisions) with respect to Cleared CDS.[53]

Such CME clearing members must also comply with certain additional conditions—not in the earlier Order—with respect to such activities. The customers for whom the clearing member receives or holds such funds or securities may not be natural persons. In addition, the clearing member must make certain risk disclosures to those customers.[54]

This exemption is further conditioned on funds or securities received or held by the clearing member for the purpose of purchasing, selling, clearing, settling, or holding cleared CDS positions for those customers being held in one of three manners. First, such funds and securities may be held in an account established in accordance with Section 4d of the CEA and CFTC Rules 1.20 through 1.30 and 1.32 thereunder.

Alternatively, in the absence of a 4d order from the CFTC, those funds and securities may be held in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules,[55] established for an FCM to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions).

Finally, if neither of those other accounts is available, those funds and securities must be held in an account established in accordance with CFTC Rule 30.7.[56] In that situation, the clearing member must disclose to Cleared CDS customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-à-vis other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

To facilitate compliance with the segregation practices that are required as a condition to this temporary exemption, the clearing member—regardless of the type of account discussed above that it uses—also must annually provide CME with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment. The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements.[57]

Finally, consistent with the CME Exemptive Order, a CME clearing member that receives or holds funds or securities of customers for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions shall segregate such funds and securities of customers from the CME clearing member's own assets (*i.e.,* the member may not permit the customers to ''opt out'' of applicable segregation requirements for such funds and securities even if regulations or laws

[47] *See* text at note 23, *supra.*

[48] *See* 74 FR 40794 (Aug. 13, 2009).

[49] *See* note 35, *supra.*

[50] *See* note 40, *supra.*

[51] *See* notes 41 through 43, *supra,* and accompanying text. Nor are we exempting those members from provisions related to government securities, as discussed above. *See* note 44, *supra.*

[52] The term ''customer,'' solely for purposes of Part III(d) and (e), *infra,* and corresponding references in this Order, means a ''customer'' as defined under CFTC Regulation 1.3(k). 17 CFR 1.3(k).

[53] This condition is similar to a condition in the earlier Order.

[54] The clearing member must disclose that it is not regulated by the Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

[55] 17 CFR 190.01 *et seq.*

[56] The conditions in this Order require that any FCM that holds Cleared CDS customer funds and securities in a 30.7 account must segregate *all* such customer funds and securities in a 30.7 account. It is our understanding that this is consistent with CME Rule 8F03.

[57] This condition requiring the clearing member to convey a third-party audit report to CME as a repository for regulators does not impose upon CME any independent duty to audit or otherwise review that information. This condition also does not impose on CME any independent fiduciary or other obligation to any customer of a clearing member.

would permit the customer to ''opt out'').

F. Extended Temporary Conditional General Exemption for Certain Registered Broker-Dealers Including Certain Broker-Dealer-FCMs

The CME Exemptive Order granted temporary limited exemptions from Exchange Act requirements to registered broker-dealers in connection with their activities involving Cleared CDS. In crafting these temporary exemptions, we balanced the need to avoid creating disincentives to the prompt use of CCPs against the critical role that certain broker-dealers play in promoting market integrity and protecting customers (including broker-dealer customers that are not involved with CDS transactions).

In light of the risk management and systemic benefits in continuing to facilitate CDS clearing by CME through targeted conditional exemptions to registered broker-dealers, the Commission finds pursuant to Section 36 of the Exchange Act that it is necessary or appropriate in the public interest and is consistent with the protection of investors to exercise its authority to extend this temporary conditional registered broker-dealer exemption from certain Exchange Act requirements until March 31, 2010.[58]

Consistent with the temporary exemptions discussed above, and solely with respect to Cleared CDS, we are temporarily exempting registered broker-dealers (including registered broker-dealers that are also FCMs (''BD–FCMs'')) from provisions of the Exchange Act and the rules and regulations thereunder that do not apply to security-based swap agreements, subject to certain conditions. As discussed above, we are not excluding registered broker-dealers, including BD–FCMs, from Exchange Act provisions that explicitly apply in connection with security-based swap agreements or from related enforcement authority provisions.[59] As above, and for similar reasons, we are not exempting registered broker-dealers, including BD–FCMs, from: Sections 5, 6, 12(a) and (g), 13, 14, 15(b)(4), 15(b)(6), 15(d), 16 and 17A of the Exchange Act.[60]

Further, we are not exempting registered broker-dealers from the following additional provisions under the Exchange Act: (1) Section 7(c),[61] regarding the unlawful extension of credit by broker-dealers; (2) Section 15(c)(3),[62] regarding the use of unlawful or manipulative devices by broker-dealers; (3) Section 17(a),[63] regarding broker-dealer obligations to make, keep, and furnish information; (4) Section 17(b),[64] regarding broker-dealer records subject to examination; (5) Regulation T,[65] a Federal Reserve Board regulation regarding extension of credit by broker-dealers; (6) Exchange Act Rule 15c3–1,[66] regarding broker-dealer net capital; (7) Exchange Act Rule 15c3–3,[67] regarding broker-dealer reserves and custody of securities; (8) Exchange Act Rules 17a–3 through 17a–5,[68] regarding records to be made and preserved by broker-dealers and reports to be made by broker-dealers; and (9) Exchange Act Rule 17a–13,[69] regarding quarterly security counts to be made by certain exchange members and broker-dealers.[70] Registered broker-dealers must comply with these provisions in connection with their activities involving non-excluded CDS because these provisions are especially important to helping protect customer funds and securities, ensure proper credit practices, and safeguard against fraud and abuse.[71]

However, CME clearing members that are BD–FCMs and that receive or hold customer funds or securities for the purpose of purchasing, selling, clearing, settling, or holding CDS positions cleared by CME in a futures account (as that term is defined in Rule 15c3–3(a)(15)[72]) also shall be exempt from Exchange Act Rule 15c3–3, subject to conditions that are similar to those—discussed above—that are applicable to CME that are not broker-dealers and that hold customer funds and securities in connection with Cleared CDS transactions. Thus, such BD–FCMs must be in material compliance with CME rules, as well as and applicable laws and regulations relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS. A BD–FCM may not receive or hold funds or securities relating to Cleared CDS transactions and positions for customers who are natural persons. In addition, the BD–FCM must make certain risk disclosures to each such customer.[73] Further, the BD–FCM must hold the customer funds or securities in the same type of account (*e.g.,* in a 4d account) as is required for other clearing members that hold customer funds and securities in connection with Cleared CDS transactions.[74] The BD–FCM also must

[58] The temporary exemptions addressed above—with regard to CME, certain clearing members, and certain eligible contract participants—are not available to persons that are registered as broker-dealers with the Commission (other than those that are notice registered pursuant to Exchange Act Section 15(b)(11)). Exchange Act Section 15(b)(11) provides for notice registration of certain persons that effect transactions in security futures products. 15 U.S.C. 78o(b)(11).

[59] *See* notes 35 and 40, *supra.* As noted above, broker-dealers also would be subject to Section 15(c)(1) of the Exchange Act, which prohibits brokers and dealers from using manipulative or deceptive devices, because that provision explicitly applies in connection with security-based swap agreements. In addition, to the extent the Exchange Act and any rule or regulation thereunder imposes any other requirement on a broker-dealer with respect to security-based swap agreements (*e.g.,* requirements under Rule 17h–1T to maintain and preserve written policies, procedures, or systems concerning the broker or dealer's trading positions and risks, such as policies relating to restrictions or limitations on trading financial instruments or products), these requirements would continue to apply to broker-dealers' activities with respect to Cleared CDS.

[60] *See* notes 41 through 43, *supra,* and accompanying text. We also are not exempting those members from provisions related to government securities, as discussed above. *See* note 44, *supra.*

[61] 15 U.S.C. 78g(c).

[62] 15 U.S.C. 78o(c)(3).

[63] 15 U.S.C. 78q(a).

[64] 15 U.S.C. 78q(b).

[65] 12 CFR 220.1 *et seq.*

[66] 17 CFR 240.15c3–1.

[67] 17 CFR 240.15c3–3.

[68] 17 CFR 240.17a–3 through 240.17a–5.

[69] 17 CFR 240.17a–13.

[70] Solely for purposes of this temporary exemption, in addition to the general requirements under the referenced Exchange Act sections, registered broker-dealers shall only be subject to the enumerated rules under the referenced Exchange Act sections.

[71] Indeed, Congress directed the Commission to promulgate broker-dealer financial responsibility rules, including rules relating to custody, the use of customer securities, the use of customers' deposits or credit balances, and the establishment of minimum financial requirements. *See* Exchange Act Section 15(c)(3).

[72] 17 CFR 240.15c3–3(a)(15).

[73] The BD–FCM must disclose that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding.

This BD–FCM condition differs from the analogous disclosure condition related to other CME clearing members that hold customer funds and securities, in that the other condition also requires disclosure that the clearing member is not regulated by the Commission.

[74] As with the exemption applicable to those other CME clearing members, in the absence of a 4d order from the CFTC, the BD–FCM may hold the funds and securities in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules, established for an FCM to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions). *See* Part II.E, *supra.*

If that alternative also is not available, the BD–FCM must hold the funds and securities in an account established in accordance with CFTC Rule 30.7. In that situation, the clearing member must disclose to Cleared CDS customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-à-vis other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

segregate the funds and securities of customers from the CME clearing member's own assets (*i.e.,* the member may not permit the customers to ''opt out'' of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to ''opt out''). In addition, the BD–FCM also must annually provide CME with a self-assessment that it is in compliance with the requirements, along with a report by the clearing member's independent third-party auditor that attests to that assessment.[75]

Finally—and in addition to the conditions that are applicable to CME that are not broker-dealers and that hold customer funds and securities in connection with Cleared CDS transactions—the CME clearing member must comply with the margin rules for Cleared CDS of the self-regulatory organization that is its designated examining authority[76] (*e.g.,* FINRA).

G. Solicitation of Comments

When we granted our initial temporary conditional exemptions in connection with CDS clearing by CME, we solicited comment on all aspects of the exemptions, and specifically requested comment as to the duration of the temporary exemptions, the appropriateness of the exemptive conditions, and whether CME should be required to register as a clearing agency under the Exchange Act. We received no comments in response to this request.

In connection with this Order extending the temporary conditional exemptions granted in connection with CDS clearing by CME, and expanding that relief to accommodate CME's settlement price calculation methodology, we reiterate our request for comments on all aspects of the exemptions. We particularly request comments as to the exemption we are granting in connection with the calculation of settlement prices, including whether the conditions on the exemption promote fair and accurate settlement prices and include adequate safeguards and procedures to protect clearing members' confidential trading information. We also request comment on the adequacy of the proposed conditions for the protection of customer assets, including whether it is appropriate to permit such assets to be protected in an account that is subject to the framework provided by CFTC Rule 30.7, and, if so, whether the conditions associated with the use of that account are adequate. In addition, we request comment on whether additional conditions or requirements are appropriate to promote compliance with the requirements of the temporary conditional exemptions, and what, if any, additional conditions would be appropriate.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–06–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov/*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–06–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for public 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

III. Conclusion

It is hereby ordered, pursuant to Section 36(a) of the Exchange Act, that, until March 31, 2010:

(a) Exemption from Section 17A of the Exchange Act.

The Chicago Mercantile Exchange Inc. (''CME'') shall be exempt from Section 17A of the Exchange Act solely to perform the functions of a clearing agency for Cleared CDS (as defined in paragraph (f) of this Order), subject to the following conditions:

(1) CME shall make available on its Web site its annual audited financial statements.

(2) CME shall keep and preserve records of all activities related to the business of CME as a central counterparty for Cleared CDS. These records shall be kept for at least five years and for the first two years shall be held in an easily accessible place.

(3) CME shall supply such information and periodic reports relating to its Cleared CDS clearance and settlement services as may be reasonably requested by the Commission. CME shall also provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), and records related to its Cleared CDS clearance and settlement services. CME will provide the Commission with access to its personnel to answer reasonable questions during any such inspections related to its Cleared CDS clearance and settlement services.

(4) CME shall notify the Commission, on a monthly basis, of any material disciplinary actions taken against any CME clearing members utilizing its Cleared CDS clearance and settlement services, including the denial of services, fines, or penalties. CME shall notify the Commission promptly when CME involuntarily terminates the membership of an entity that is utilizing CME's Cleared CDS clearance and settlement services. Both notifications shall describe the facts and circumstances that led to CME's disciplinary action.

(5) CME shall notify the Commission of all changes to rules as defined under the CFTC rules, fees, and any other material events affecting its Cleared CDS clearance and settlement services, including material changes to risk management models. In addition, CME will post any rule or fee changes on the CME Web site. CME shall provide the Commission with notice of all changes to its rules not less than one day prior to effectiveness or implementation of such rule changes or, in exigent circumstances, as promptly as reasonably practicable under the circumstances. Such notifications will not be deemed rule filings that require Commission approval.

(6) CME shall provide the Commission with annual reports and any associated field work concerning its Cleared CDS clearance and settlement services prepared by independent audit personnel that are generated in accordance with risk assessment of the

As above, the conditions in this Order require that BD–FCM (as well as any other FCM) that holds Cleared CDS customer funds and securities in a 30.7 account must segregate *all* such customer funds and securities in a 30.7 account.

[75] The report must be dated the same date as the clearing member's annual audit report (but may be separate from it), and must be produced in accordance with the standards that the auditor follows in auditing the clearing member's financial statements. *See* text accompanying note 57, *supra.*

[76] *See* 17 CFR 240.17d–1 for a description of a designated examining authority.

areas set forth in the Commission's Automation Review Policy Statements. CME shall provide the Commission (beginning in its first year of operation) with its annual audited financial statements prepared by independent audit personnel for CME.

(7) CME shall report to the Commission all significant outages of clearing systems having a material impact on its Cleared CDS clearance and settlement services. If it appears that the outage may extend for 30 minutes or longer, CME shall report the systems outage immediately. If it appears that the outage will be resolved in less than 30 minutes, CME shall report the systems outage within a reasonable time after the outage has been resolved.

(8) CME, directly or indirectly, shall make available to the public on terms that are fair and reasonable and not unreasonably discriminatory: (i) All end-of-day settlement prices and any other prices with respect to Cleared CDS that CME may establish to calculate settlement variation or margin requirements for CME clearing members; and (ii) any other pricing or valuation information with respect to Cleared CDS as is published or distributed by CME.

(9) CME shall not materially change its methodology for determining Cleared CDS margin levels without prior written approval from the Commission, and from FINRA with respect to customer margin requirements that would apply to broker-dealers.

(b) Exemption from Sections 5 and 6 of the Exchange Act

(1) CME shall be exempt from the requirements of Sections 5 and 6 of the Exchange Act and the rules and regulations thereunder in connection with its calculation of settlement prices for Cleared CDS, subject to the following conditions:

(i) CME shall report the following information with respect to its determination of daily settlement prices for Cleared CDS to the Commission within 30 days of the end of each quarter, and preserve such reports for as long as CME offers CDS clearing services and for a period of at least five years thereafter:

(A) The total dollar volume of CDS transactions executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index; and

(B) The total unit volume or notional amount executed during the quarter pursuant to CME's price quality auction methodology, broken down by reference entity, security, or index;

(ii) CME shall establish and maintain adequate safeguards and procedures to protect participants' confidential trading information related to Cleared CDS. Such safeguards and procedures shall include:

(A) Limiting access to the confidential trading information of participants to those CME employees who have a need to access such information in connection with the provision of CME CDS clearing services or who are responsible for compliance with this exemption or any other applicable rules; and

(B) Implementing policies and procedures for CME employees with access to such information with respect to trading for their own accounts. CME shall adopt and implement adequate oversight procedures to ensure that the policies and procedures established pursuant to this condition are followed; and

(iii) CME shall satisfy the conditions of the temporary exemption from Section 17A of the Exchange Act set forth in paragraphs (a)(1)—(9) of this Order.

(2) Any CME clearing member shall be exempt from the requirements of Section 5 of the Exchange Act to the extent such CME clearing member uses any facility of CME to effect any transaction in Cleared CDS, or to report any such transaction, in connection with CME's clearance and risk management process for Cleared CDS.

(c) Exemption for CME and certain eligible contract participants.

(1) Persons eligible. The exemption in paragraph (c)(2) is available to:

(i) CME; and

(ii) Any eligible contract participant (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), other than:

(A) An eligible contract participant that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for other persons;

(B) An eligible contract participant that is a self-regulatory organization, as that term is defined in Section 3(a)(26) of the Exchange Act; or

(C) A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof).

(2) Scope of exemption.

(i) In general. Subject to the condition specified in paragraph (c)(3), such persons generally shall, solely with respect to Cleared CDS, be exempt from the provisions of the Exchange Act and the rules and regulations thereunder that do not apply in connection with security-based swap agreements. Accordingly, under this exemption, those persons would remain subject to those Exchange Act requirements that explicitly are applicable in connection with security-based swap agreements (*i.e.,* paragraphs (2) through (5) of Section 9(a), Section 10(b), Section 15(c)(1), subsections (a) and (b) of Section 16, Section 20(d), and Section 21A(a)(1), and the rules thereunder that explicitly are applicable to security-based swap agreements). All provisions of the Exchange Act related to the Commission's enforcement authority in connection with violations or potential violations of such provisions also remain applicable.

(ii) Exclusions from exemption. The exemption in paragraph (c)(2)(i), however, does not extend to the following provisions under the Exchange Act:

(A) Paragraphs (42), (43), (44), and (45) of Section 3(a);

(B) Section 5;

(C) Section 6;

(D) Section 12 and the rules and regulations thereunder;

(E) Section 13 and the rules and regulations thereunder;

(F) Section 14 and the rules and regulations thereunder;

(G) Paragraphs (4) and (6) of Section 15(b);

(H) Section 15(d) and the rules and regulations thereunder;

(I) Section 15C and the rules and regulations thereunder;

(J) Section 16 and the rules and regulations thereunder; and

(K) Section 17A (other than as provided in paragraph (a)).

(3) Condition for CME clearing members. Any CME clearing member relying on this exemption must be in material compliance with the rules of CME.

(d) Exemption for certain CME clearing members.

Any CME clearing member registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act (but that is not registered as a broker or dealer under Section 15(b) of the Exchange Act (other than paragraph (11) thereof)) that receives or holds funds or securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS for other persons shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, subject to the following conditions:

(1) The clearing member shall be in material compliance with the rules of CME (including Rules 971 and 973 relating to Segregation and Secured

Requirements and Customer Accounts with the Clearing House), and also shall be in material compliance with applicable laws and regulations, relating to capital, liquidity, and segregation of customers' funds and securities (and related books and records provisions) with respect to Cleared CDS;

(2) The customers for whom the clearing member receives or holds such funds or securities shall not be natural persons;

(3) The clearing member shall disclose to such customers that the clearing member is not regulated by the Commission, that U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding;

(4) Customer funds and securities received or held by the clearing member for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions for such customers shall be held in one of the following manners:

(i) In an account established in accordance with section 4d of the Commodity Exchange Act and CFTC Rules 1.20 through 1.30 and 1.32 [17 CFR 1.20 through 1.30 and 1.32] thereunder;

(ii) In the absence of an Order from the Commodity Futures Trading Commission (''CFTC'') permitting the use of an account specified in subparagraph (d)(4)(i) for holding such funds and securities, in an account that is part of a separate account class, specified by CFTC Bankruptcy Rules [17 CFR 190.01 *et seq.*], established for a futures commission merchant to hold its customers' positions in cleared OTC derivatives (and funds and securities posted to margin, guarantee, or secure such positions); or

(iii) If the clearing member is unable to hold such funds and securities as specified in subparagraph (d)(4)(i) or (ii), the clearing member shall:

(A) Hold such funds and securities in a separate account that is established in accordance with CFTC Rule 30.7 [17 CFR 30.7], and

(B) Disclose to such customers that uncertainty exists as to whether they would receive priority in bankruptcy (vis-á-vis other customers) with respect to any funds or securities held by the clearing member to collateralize Cleared CDS positions.

(5) The clearing member annually shall provide CME with

(i) An assessment by the clearing member that it is in compliance with all the provisions of subparagraphs (d)(4)(i) through (iii) in connection with such activities, and

(ii) A report by the clearing member's independent third-party auditor that attests to, and reports on, the clearing member's assessment described in subparagraph (d)(5)(i) and that is:

(A) Dated as of the same date as, but which may be separate and distinct from, the clearing member's annual audit report;

(B) Produced in accordance with the auditing standards followed by the independent third-party auditor in its audit of the clearing member's financial statements.

(6) To the extent that the clearing member receives or holds funds or securities of customers for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS positions, the clearing member shall segregate such funds and securities of customers from the clearing member's own assets (*i.e.,* the member may not permit such customers to ''opt out'' of applicable segregation requirements for such funds and securities even if regulations or laws would permit the customer to ''opt out'').

(e) Exemption for certain registered broker-dealers.

(1) In general. A broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) shall be exempt from the provisions of the Exchange Act and the rules and regulations thereunder specified in paragraph (c)(2), solely with respect to Cleared CDS, except:

(i) Section 7(c);
(ii) Section 15(c)(3);
(iii) Section 17(a);
(iv) Section 17(b);
(v) Regulation T, 12 CFR 200.1 *et seq.;*
(vi) Rule 15c3–1;
(vii) Rule 15c3–3;
(viii) Rule 17a–3;
(ix) Rule 17a–4;
(x) Rule 17a–5; and
(xi) Rule 17a–13.

(2) Broker-dealers that also are futures commission merchants. A CME clearing member that is a broker or dealer registered under Section 15(b) of the Exchange Act (other than paragraph (11) thereof) and that is also registered as a futures commission merchant pursuant to Section 4f(a)(1) of the Commodity Exchange Act and that receives or holds customer funds and securities for the purpose of purchasing, selling, clearing, settling, or holding Cleared CDS in a futures account (as that term is defined in Rule 15c3–3(a)(15) [17 CFR 240.15c3–3(a)(15)]) also shall be exempt from Exchange Act Rule 15c3–3, subject to the following conditions:

(i) The clearing member shall comply with the conditions set forth in paragraphs (d)(1), (2), (4), (5), and (6) above;

(ii) The clearing member shall disclose to Cleared CDS customers that the U.S. broker-dealer segregation requirements and protections under the Securities Investor Protection Act will not apply to funds or securities held by the clearing member to collateralize Cleared CDS positions, and that the applicable insolvency law may affect such customers' ability to recover funds and securities, or the speed of any such recovery, in an insolvency proceeding; and

(iii) The CME clearing member shall collect from each customer the amount of margin that is not less than the amount required for Cleared CDS under the margin rule of the self-regulatory organization that is its designated examining authority.

(f) For purposes of this Order, ''Cleared CDS'' shall mean a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to CME, that is offered only to, purchased only by, and sold only to eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act as in effect on the date of this Order (other than a person that is an eligible contract participant under paragraph (C) of that section)), and in which:

(1) The reference entity, the issuer of the reference security, or the reference security is one of the following:

(i) An entity reporting under the Exchange Act, providing Securities Act Rule 144A(d)(4) information, or about which financial information is otherwise publicly available;

(ii) A foreign private issuer whose securities are listed outside the United States and that has its principal trading market outside the United States;

(iii) A foreign sovereign debt security;

(iv) An asset-backed security, as defined in Regulation AB, issued in a registered transaction with publicly available distribution reports; or

(v) An asset-backed security issued or guaranteed by Fannie Mae, Freddie Mac, or Ginnie Mae; or

(2) The reference index is an index in which 80 percent or more of the index's weighting is comprised of the entities or securities described in subparagraph (1).

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30087 Filed 12–17–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61139; File No. SR–NYSEAmex–2009–87]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Add Commentary .01 to Rule 934.3NY

December 10, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 7, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Rule 934.3NY to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the Trading Crowd (''tied hedge'' orders) based on a recently approved rule change of the Chicago Board Options Exchange (''CBOE'').[4] The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add Commentary .01 to Rule 934.3NY to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the Trading Crowd (''tied hedge'' orders), based on a recently approved rule change of the CBOE. Rule 934.3NY generally sets forth the procedures by which a floor broker may cross an order with a solicited contra-side order. Currently, transactions executed pursuant to Rule 934.3NY are subject to the restrictions of paragraph (c) of Rule 995NY, Prohibited Conduct, which prohibits trading based on knowledge of imminent undisclosed solicited transactions (commonly referred to as ''anticipatory hedging'').

Existing Anticipatory Hedge Rule

By way of background, when Rule 934.3NY was adopted in 2009, the Exchange noted its belief that it is appropriate to permit solicitation between potential buyers and sellers of options in advance of the time they send actual orders to the trading crowd on the Exchange. The Exchange also noted that, if the orders that comprise a solicited transaction are not suitably exposed to the order interaction process on the Trading Floor, the execution of such orders would not be consistent with Exchange rules designed to promote order interaction in an open-outcry auction.[5] Solicited transactions by definition entail negotiation, and if the orders that comprise a solicited transaction are not adequately exposed to the floor auction, the in-crowd market participants (*e.g.,* Market-Makers in the trading crowd) cannot have sufficient time to digest and react to those orders' terms. The pre-negotiation inherent in the solicitation process thus can enable the parties to a solicited transaction to preempt the crowd to an execution at the pre-negotiated price. Thus, the Exchange notes, Rule 995NY was designed to preserve the right to solicit orders in advance of submitting a proposed trade to the crowd, while at the same time assuring that orders that are the subject of a solicitation are exposed to the auction market in a meaningful way. In addition to requiring disclosure of orders,[6] Rule 995NY provides that it is inconsistent with just and equitable principles of trade for any ATP Holder or associated person, who has knowledge of all the material terms of an originating order [7] and a solicited order (including a facilitation order) that matches the original order's price, to enter an order to buy or sell an option of the same class as any option that is the subject of the solicitation prior to the time that the original order's terms are disclosed to the crowd or the execution of the solicited transaction can no longer reasonably be considered imminent. This prohibition extends to orders to buy or sell the underlying security or any ''related instrument,'' as that term is defined in the rule.[8]

When Rule 995NY was adopted in 2009, the Exchange believed that maintaining the prohibition on anticipatory hedging was necessary to prevent ATP Holders and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely-related instrument in advance of persons represented in the relevant options crowd. NYSE Amex believes the basic principle remains true today, but changes in the marketplace have caused the Exchange to re-evaluate the effectiveness and efficiency of the existing rule's procedural requirements. The Exchange believes that increased volatility in the markets, as well as the advent of penny trading in underlying

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 60499 (August 13, 2009), 74 FR 42350 (August 21, 2009) (order approving SR–CBOE–2009–007).

[5] For example, Rule 931NY, Manner of Bidding and Offering, requires bids and offers to be made at the post by public outcry, and Rule 934NY imposes order exposure requirements on floor brokers seeking to cross buy orders with sell orders.

[6] For example, the rule requires that the ATP Holder representing an original order that is the subject of a solicitation to disclose the terms of the original order to the crowd before the original order can be executed. This disclosure is intended to eliminate the unfairness that can be associated with pre-negotiated transactions among the parties to the solicitation versus the in-crowd market participants, and would subject the order that is the subject of the solicitation to full auction interaction with other orders in the crowd. In addition, priority is accorded depending on whether the original order is disclosed throughout the solicitation period; whether the solicited order improves the best bid or offer in the trading crowd; and whether the solicited order matches the original order's limit. Rule 934.1NY contains exceptions to these priority provisions in instances where a crossing participation entitlement is sought.

[7] An ''originating order'' is an order respecting an option traded on the Exchange, including a spread, combination, straddle, stock option, security-future-option or any other complex order. *See* Rule 934.3NY.

[8] For purposes of Rule 995NY(c), an order to buy or sell a ''related instrument,'' means, ''in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.''

stocks and resultant decreased liquidity at the top of each underlying markets' displayed national best bid or offer, it has become increasingly difficult for ATP Holders to assess the ultimate execution prices and the extent of available stock to hedge related options facilitation/solicitation activities, and to manage that market risk. This risk extends to simple and complex orders, and to all market participants involved in the transaction (whether upstairs or on-floor) because of the uncertainty of the extent to which the market participant will participate in the transaction, the amount of time associated with the auction process, and the likelihood that the underlying stock prices in today's environment may be difficult to assess and change before they are able to hedge. These circumstances make it difficult to obtain a hedge, difficult to quote orders and difficult to achieve executions, and can translate into less liquidity in the form of smaller size and wider quote spreads, fewer opportunities for price improvement, and the inefficient handling of orders. Additionally, more and more trading activity appears to be taking place away from the exchange-listed environment and in the over-the-counter (''OTC'') market, which by its nature is not subject to the same trade-through type risks present in the exchange environment. Therefore, the Exchange is seeking to make its trading rules more efficient not only to address the market risk and execution concerns, but also to effectively compete with and attract volume from the OTC market. What is more, Market Makers- trading strategies have evolved. Whereas before Market Makers tended to trade based on delta risk,[9] now market-making strategy is based more on volatility.[10] The tied hedge transaction procedures (described below) are designed in a way that is consistent with this shift toward a volatility trading strategy, and makes it more desirable for Market-Makers to compete for orders that are exposed through the solicitation process.

Proposed Exception to Anticipatory Hedge Rule

In order to address the concerns associated with increased volatility and decreased liquidity and more effectively compete with the OTC market, the Exchange is proposing to adopt a limited exception to the anticipatory hedging restrictions that would permit the representation of hedging stock positions in conjunction with option orders, including complex orders, in the options trading crowd (a ''tied hedge'' transaction). The Exchange believes this limited exception remains in keeping with the original design of Rule 934.3NY, but sets forth a more practicable approach considering today's trading environment that will provide the ability to hedge in a way that will still encourage meaningful competition among upstairs and floor brokers. Besides stock positions, the proposal would also permit security futures positions to be used as a hedge. In addition, in the case where the order is for options on indices, options on exchange-traded funds (''ETF'') or a related instrument may be used as a hedge. A ''related instrument'' would mean, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A ''related instrument'' would mean, in reference to an ETF, a futures contract on any economically equivalent index applicable to the ETF underlying the option order.[11]

With a tied hedge transaction, Exchange ATP Holders would be permitted to first hedge an option order with the underlying security, a security future or futures contract, as applicable, and then forward the option order and the hedging position to an Exchange floor broker with instructions to represent the option order together with the hedging position to the options trading crowd. The in-crowd market participants that chose to participate in the option transaction must also participate in the hedging position. First, under the proposal, the original option order must be in a class designated as eligible for a tied hedge transaction as determined by the Exchange, including FLEX Options classes.[12] The original option order must also be within designated tied hedge eligibility parameters, which would be determined by the Exchange and would not be smaller than 500 contracts.[13] The Exchange notes that the minimum order size would apply to an individual originating order.[14] Multiple originating orders could not be aggregated to satisfy the requirement (though multiple contra-side solicited orders could be aggregated to execute against the originating order). The Exchange states that the primary purpose of this provision is to limit use of the tied hedge procedures to larger orders that might benefit from an ATP Holder's ability to execute a facilitating hedge. Assuming an option order meets these eligibility parameters, the proposal also includes a number of other conditions that must be satisfied.

Second, the proposal would require that, prior to entering tied hedge orders on behalf of customers, the ATP Holder must deliver to the customer a one-time written notification informing the customer that their order may be executed using the Exchange's tied hedge procedures. Under the proposal, the written notification must disclose the terms and conditions contained in the proposed rule and be in a form approved by the Exchange. Given the minimum size requirement of 500 contracts per order, the Exchange believes that use of the tied hedges procedures will generally consist of orders for the accounts of institutional or sophisticated, high net worth investors. The Exchange therefore believes that a one-time notification delivered by the ATP Holder to the customer would be sufficient, and that

[9] The price of an option is not completely dependent on supply and demand, nor on the price of the underlying security. Market-Makers' price options based on basic measures of risk as well. One of these such measures, delta, is the rate of change in the price of an option as it relates to changes in the price of the underlying security, security future or futures contract. The delta of an option is measured incrementally based on movement in the price of the underlying security, security future or futures contract. For example, if the price of an option increases or decreases by $1.00 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 100. If the price of an option increases or decreases by $0.50 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 50.

[10] Volatility is a measure of the fluctuation in the underlying security's market price. Market-Makers that trade based on volatility have options positions that they hedge with the underlying. Once hedged, the risk exposure to the Market-Maker is realized volatility and implied volatility. Realized volatility is the actual volatility in the underlying. Implied volatility is determined by using option prices currently existing in the market at the time rather than using historical data on the market price changes of the underlying.

[11] For example, a tied hedge order involving options on the iShares Russell 2000 Index ETF might involve a hedge position in the underlying ETF, security futures overlying the ETF, or futures contracts overlying the Russell 2000 Index.

[12] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[13] The designated classes and minimum order size applicable to each class would be communicated to ATP Holders via Regulatory Circular. For example, the Exchange could determine to make the tied hedge transaction procedures available in options class XYZ for orders of 1,000 contracts or more. Such a determination would be announced via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available.

[14] In determining whether an individual original order satisfies the eligible order size requirement, the proposed Rule text states that any Complex Order must contain one leg alone which is for the eligible order size or greater.

an order-by-order notification would be unnecessary and overly burdensome.

Third, an ATP Holder would be required to create an electronic record that it is engaging in a tied hedge order in a form and manner prescribed by the Exchange. The Exchange states that the purpose of this provision is to create a record to ensure that hedging trades would be appropriately associated with the related options order and appropriately evaluated in the Exchange's surveillance program. The Exchange believes that this requirement should enable the Exchange to monitor for compliance with the requirements of the proposed rule, as discussed below, by identifying the specific purchase or sell orders relating to the hedging position.

Fourth, the proposed rule would require that ATP Holders that have decided to engage in tied hedge orders for representation in the trading crowd would have to ensure that the hedging position associated with the tied hedge order is comprised of a position that is designated as eligible for a tied hedge transaction. Eligible hedging positions would be determined by the Exchange for each eligible class and may include (i) the same underlying stock applicable to the options order, (ii) a security future overlying the same stock applicable to the option order, or (iii) in reference to an option on an index or an ETF, a ''related instrument'' (as described above). For example, for options overlying XYZ stock, the Exchange may determine to designate the underlying XYZ stock or XYZ security futures or both as eligible hedging positions.[15]

The Exchange states that the purpose of this provision is to ensure that the hedging position would be for the same stock, equivalent security future or related instrument, as applicable, thus allowing crowd participants who may be considering participation in a tied hedge order to adequately evaluate the risk associated with the option as it relates to the hedge. With stock positions in particular, the Exchange notes that occasionally crowd participants hedge option positions with stock that is related to the option, such as the stock of an issuer in the same industry, but not the actual stock associated with the option. Except as otherwise discussed above for index options, the proposed rule change would not allow such a ''related'' hedging stock position, but would require the hedging stock position to be the actual security underlying the option.

Fifth, the proposal would require that the entire hedging position be brought without undue delay to the trading crowd. In considering whether the hedging position is presented without ''undue delay,'' the Exchange believes that ATP Holders should continue to have the same ability to shop an order in advance of presenting it to the crowd and should be able to enhance that process through obtaining a hedge. The Exchange also believes that, once a hedge is obtained, the order should be brought to the crowd promptly in order to satisfy the ''undue delay'' requirement. In addition, the proposal would require that the hedging position be announced to the Trading Crowd concurrently with the options order, offered to the crowd in its entirety, and offered at the execution price received by the ATP Holder introducing the order to any in-crowd market participant who has established parity or priority for the related options. In-crowd market participants that participate in the option transaction must also participate in the hedging position on a proportionate basis[16] and would not be permitted to prevent the option transaction from occurring by giving a competing bid or offer for one component of the tied hedge order. The Exchange states that the purpose of these requirements is to ensure that the hedging position represented to the crowd would be a good faith effort to provide in-crowd market participants with the same opportunity as the ATP Holder introducing the tied hedge order to compete most effectively for the option order.

For example, if an ATP Holder introducing a tied stock hedge order were to offer 1,000 XYZ option contracts to the crowd (overlying 100,000 shares of XYZ stock) and concurrently offer only 30,000 of 100,000 shares of the underlying stock that the ATP Holder obtained as a hedge, crowd participants might only be willing or able to participate in 300 of the option contracts offered if the hedging stock position cannot be obtained at a price as favorable as the stock hedging position offering price, if at all. The Exchange states that the effect of this would be to place the crowd at a disadvantage relative to the introducing ATP Holder for the remaining 700 option contracts in the tied stock hedge order, and thus create a disincentive for the crowd to bid or offer competitively for the remaining 700 option contracts. The Exchange believes the requirement that the hedging position be presented concurrently with the option order in the crowd and offered to the crowd in its entirety at the execution price received by the ATP Holder introducing the order should ensure that the crowd would be competing on a level playing field with the introducing ATP Holder to provide the best price to the customer.

Sixth, the proposal would require that the hedging position not exceed the options order on a delta basis. For example, in the situation where a tied stock hedge order involves the simultaneous purchase of 50,000 shares of XYZ stock and the sale of 500 XYZ call contract (known as a ''buy-write''), and the delta of the option is 100, it would be considered ''hedged'' by 50,000 shares of stock. Accordingly, the proposed rule would not allow the introducing ATP Holder firm to purchase more than 50,000 shares of stock in the hedging stock position. The Exchange believes that it is reasonable to require that the hedging position be in amounts that do not exceed the equivalent size of the related options order on a delta basis, and not for a greater number of shares. The Exchange believes that the proposed rule change would support its view that the ATP Holder introducing the tied hedge order be guided by the notion that any excess hedging activity could be detrimental to the eventual execution price of the option order. Consequently, while delta estimates may vary slightly, the introducing ATP Holder would be required to assume hedging positions not to exceed the equivalent size of the options order on a delta basis.[17]

[15] As with designated classes and minimum order size, the eligible hedging positions applicable to each class would be communicated to the ATP Holder via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available. *See* note 13, *supra.*

[16] For example, if an in-crowd market participant's allocation is 100 contracts out of a 500 contract option order (1/5), the same in-crowed market participant would trade 10,000 shares of a 50,000 stock hedge position tied to that option order (1/5).

[17] The Exchange notes that there may be scenarios where the introducing ATP Holder purchases (sells) less than the delta, *e.g.,* when there is not enough stock is available to buy (sell) at the desired price. In such scenarios, the introducing ATP Holder would present the stock that was purchased (sold) and share it with the in-crowd market participants on equal terms. This risk of obtaining less than a delta hedge is a risk that exists under the current rules because of the uncertainty that exists when market participants price an option and have to anticipate the price at which they will be able to obtain a hedge. The proposed tied hedge procedures are designed to help reduce this risk, but the initiating ATP Holder may still be unable to execute enough stock at the desired price. To the extent the initiating ATP Holder is able to execute any portion of the hedge, the risk exposure to the initiating ATP Holder and the in-crowd market participants would be diminished because those shares would be ''tied up'' and available for everyone that participates on the resulting tied hedge transaction. The Exchange

The Exchange believes that the delta basis requirement, together with the additional conditions that an introducing ATP Holder bring the hedging position without undue delay to the trading crowd and announce it concurrently with the option order, offer it to the crowd in its entirety, and offer it at the execution price received by the ATP Holder or to any in-crowd market participant who has established parity or priority, will help assure that the hedging activity is bona fide and not for speculative or manipulative purposes. Additionally, the Exchange believes these conditions will help assure that there is no adverse affect on the auction market because, as discussed above, in-crowd market participants will have the same opportunity as the ATP Holder introducing the tied hedge order to compete for the option order and will share the same benefits of limiting the market risk associated with hedging. The Exchange believes that customers will also benefit if the market risks are limited in the manner proposed. Once an original order is hedged, there is no delta risk. With the delta risk minimized, quotes will likely narrow as market participants (whether upstairs or on-floor) are better able to hedge and compete for orders. For example, Market-Makers could more easily quote markets to trade against a customer's original order based on volatility with the delta risk minimized, which would ultimately present more price improvement opportunities to the original order.[18]

At this time, the Exchange is not proposing any special priority provisions applicable to tied hedge transactions, though it intends to evaluate whether such changes are desired and may submit a separate rule filing on this subject in the future. Under the instant proposal, all tied hedge transactions will be treated as Complex Orders (regardless of whether the original order was a simple or complex order). Priority will be afforded in accordance with the Exchange's existing open outcry allocation and reporting procedures for Complex Orders.[19] Any resulting tied hedge transactions will also be subject to the existing NBBO trade-through requirements for options and stock, as applicable. In this regard, the Exchange believes that the resulting option and stock components of the tied hedge transactions may qualify for various NBBO trade through exceptions including, for example, the complex trade exception to the Options Order Protection And Locked/Crossed Market Plan[20] (''Order Protection Plan'') (except in the scenario where the originating order is a simple order) and the qualified contingent trade exception to Rule 611(a) of Regulation NMS for the stock component.[21]

The Exchange recognizes that, at the time a tied hedge transaction is executed in a Trading Crowd, market conditions in any of the non-options market(s) may prevent the execution of the non-options leg(s) at the price(s) agreed upon. For example, the execution price may be outside the non-options market's best bid or offer (''BBO''), *e.g.,* the stock leg is to be executed at a price of $25.03 and the particular stock market's BBO is $24.93–$25.02, and such an execution would normally not be permitted unless an exception applies that permits the trade to be reported outside the BBO. The Exchange notes that the possibility of this scenario occurring exists with complex order executions today and tied hedge transactions would present nothing unique or novel in this regard. In the event the conditions in the non-options market continue to prevent the execution of the non-option leg(s) at the agreed price(s), the trade representing the options leg(s) of the tied hedge transaction may ultimately be cancelled in accordance with NYSE Amex's proposed rules.[22]

The following examples illustrate these priority principles:

- *Simple Original Order:* Introducing member receives an original customer order to buy 500 XYZ call options, which has a delta of 100. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing member, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at $25.03 per share to the NYSE Amex trading crowd.
- *Complex Original Order:* Introducing member receives an original customer stock-option order to buy 500 XYZ call options and sell 50,000 shares

does not believe that the initiating ATP Holder would have an unfair advantage by having the ability to pre-facilitate less than a delta hedge because the proposed procedures would require the in-crowd market participants to get a proportional share of the hedge. To the extent more stock is needed to complete a hedge, the initiating ATP Holder and the in crowd market participants would have the same risk exposure that they do today.

[18] The Exchange also believes that the proposed exception to the anticipatory hedging procedures will assist in the Exchange's competitive efforts to attract order flow from the OTC market, which may result in increased volume on the exchange markets.

[19] Generally, a Complex Order may be expressed in any increment and executed at a net debit or credit price with another ATP Holder without giving priority to equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the Consolidated Book provided at least one leg of the order betters the corresponding bid (offer) in the Consolidated Book. For stock-option orders and security future-option orders, this means that the options leg of the order has priority over bids (offers) of the trading crowd but not over bids (offers) in the Consolidated Book. In addition, for complex orders with non-option leg(s), such as stock-option orders, a bid or offer is made and accepted subject to certain other conditions, including that the options leg(s) may be cancelled at the request of any ATP Holder that is a party to the transaction if market conditions in any other market(s) prevent the execution of the non-options leg(s) at the agreed price(s). *See, e.g.,* NYSE Amex Rules 960NY, Trading Differentials, 963NY, Priority and Order Allocation Procedures—Open Outcry, 963.1NY, Complex Order Transactions, 965NY, Contract Made on Acceptance of Bid or Offer, and 934.3NY. Any crossing participation entitlement would also apply to the tied hedge procedures in accordance with Rule 934.3NY.

[20] A ''complex trade'' is defined as: (i) The execution of an order in an option series in conjunction with the execution of one or more related orders in different option series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0) and for the purpose of executing a particular investment strategy; or (ii) the execution of a stock option order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than 8 option contracts per unit of trading of the underlying stock or convertible security established for that series by the Options Clearing Corporation. *See* paragraph (4) of NYSE Amex Rule 990NY, Definitions (applicable to the Order Protection Plan), and subparagraph (b)(7) to NYSE Amex Rule 991NY, Order Protection.

[21] A ''qualified contingent trade'' is defined as a transaction consisting of two or more component orders, executed as agent or principal, where: (i) At least one component order is in an NMS stock; (ii) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component is contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed; (v) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (vi) any trade throughs caused by the execution of an order involving one or more NMS stocks (each an ''Exempted NMS Stock Transaction) is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade. *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008).

[22] The Exchange notes that, in the event of a cancellation, ATP Holders may be exposed to the risk associated with holding the hedge position. The Exchange intends to address this point in a circular to ATP Holders.

of XYZ stock. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing ATP Holder, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at $25.03 per share to the trading crowd.

In either the simple or complex order scenario, the next steps are the same and are no different from the procedures currently used to execute a Complex Order on NYSE Amex in open outcry.

- The in-crowd market participants would have an opportunity to provide competing quotes for the tied hedge package (and not for the individual component legs of the package). For example, assume the best net price is $24.53 (equal to $0.50 for each option contract and $25.03 for each corresponding share of hedging stock).
- The option order and hedging stock would be allocated among the in-crowd market participants that established priority or parity at that price, including the initiating ATP Holder, in accordance with the standard allocation procedures, with the options leg being executed and reported on NYSE Amex and the stock leg being executed and reported on the stock market specified by the initiating ATP Holder.

For example, the introducing member might trade 40% pursuant to an open outcry crossing entitlement (200 options contracts and 20,000 shares of stock) and the remaining balance might be with three different Market-Makers that each participated on 20% of the order (100 options contracts and 10,000 shares of stock per Market-Maker).

- *The resultant tied hedge transaction:* (i) Would qualify as a ''complex trade'' under the Order Protection Plan and the execution of the 500 option contracts with the market participants would not be subject to the NBBO for the particular option series in the scenario where the originating order is a complex order (not a simple order); and (ii) would qualify as a ''qualified contingent trade'' under Regulation NMS and the execution of the 30,000 shares of stock (the original 50,000 shares less the initiating member's 20,000 portion) with the market participants would not be subject to the NBBO for the underlying XYZ stock.
- The execution of the options leg would have to satisfy the Exchange's intra-market priority rules for Complex Orders (including that the execution price may not be outside the NYSE Amex BBO). Thus, if the Exchange's BBO for the series was $0.40–$0.55, the execution could take place at or inside that price range (*e.g.,* at the quoted price of $0.50) and could not take place outside that price range (*e.g.,* not at $0.56).
- Similarly, the execution of the stock at $25.03 per share would have to satisfy the intra-market priority rules of the market(s) where the stock is to be executed (including that the execution price may not be outside that market's BBO) or, alternatively, qualify for an exception that permits the trade to be reported outside the executing market(s)' BBO.
- If market conditions in the executing market(s) prevent the execution of the stock leg(s) at the price(s) agreed upon from occurring (*e.g.,* the BBO remains at $24.93–$25.02), then the options leg(s) could be cancelled at the request of any member that is a party to that trade.

While the particular circumstances surrounding each transaction on the Exchange's trading floor are different, the Exchange does not believe, as a general proposition, that the tied hedge procedures would be inherently harmful or detrimental to customers or have an adverse affect on the auction market. Rather, the Exchange believes the procedures will improve the opportunities for an order to be exposed to a competitive auction and represent an improvement over the current rules. The fact that the parties to such a trade end up fully hedged may contribute to the best execution of the orders and, in any event, participants continue to be governed by, among other things, their best execution responsibilities. The Exchange also believes that the proposed tied hedge procedures are fully consistent with the original design of Rule 995(c)NY, which, as discussed above, was designed to eliminate the unfairness that can be associated with a solicited transaction and to encourage meaningful competition. The tied hedge procedures will keep in-crowd market participants on equal footing with solicited parties in a manner that minimizes all parties' market risk while continuing to assure that orders are exposed in a meaningful way.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [23] in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, as it will improve the opportunities for an order to be exposed to a competitive auction and represent an improvement over the current rules and will keep in-crowd market participants on equal footing with solicited parties in a manner that minimizes all parties' market risk while continuing to assure that orders are exposed in a meaningful way.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [26] and Rule 19b–4(f)(6)(iii) thereunder.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2009–87 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–NYSEAmex–2009–87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2009–87 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30064 Filed 12–17–09; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61144; File No. SR–NYSEAmex–2009–85]

Self-Regulatory Organizations; NYSE Amex, Inc.; Notice of Filing of Proposed Rule Change To Establish the NYSE Amex Realtime Reference Prices Service

December 10, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 30, 2009, the NYSE Amex, Inc. (''NYSE Amex'' or ''Exchange''), filed with the Securities and Exchange Commission ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish the NYSE Amex Realtime Reference Prices service and to establish a flat monthly fee and a per-query fee for that service. The service allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange (''NYSE Amex Realtime Reference Prices''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. The Service

The NYSE Amex Realtime Reference Prices service will provide a low-cost service that makes real-time prices widely available to casual investors, provides vendors with a useful real-time substitute for delayed prices; and relieves vendors of administrative burdens. The product responds to the requirements for distribution of real-time last sale prices over the Internet for reference purposes, rather than as a basis for making trading decisions.

The NYSE Amex Realtime Reference Prices service will allow Internet service providers, traditional market data vendors, and others (''NYSE Amex-Only Vendors'') to make available NYSE Amex Realtime Reference Prices on a real-time basis.[4] The NYSE Amex Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange, updated in real-time. In addition, the product also includes open, high and low prices and cumulative volume. The Exchange anticipates that it will update these data elements every second, though initially it will update them once per minute. The product does not include bid/ask quotations or the size of each trade.

The Exchange will not permit NYSE Amex-Only Vendors to provide NYSE Amex Realtime Reference Prices in a context in which a trading or order-routing decision can be implemented unless the NYSE Amex-Only Vendor also provides consolidated displays of Network A last sale prices available in an equivalent manner, as Rule 603(c)(1) of Regulation NMS requires.

The service would eliminate some of the administrative burdens associated with the distribution of real-time CTA prices. The service would feature a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange notes that it will make the NYSE Amex Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA and Nasdaq/UTP Plans.

b. The Fees

The Exchange proposes to establish a $10,000 monthly flat fee that entitles an NYSE Amex-Only Vendor to receive access to the NYSE Amex Realtime Reference Prices datafeed. For that fee, the NYSE Amex-Only Vendor may provide unlimited NYSE Amex Realtime Reference Prices to an unlimited number of the NYSE Amex-Only Vendor's subscribers and customers. The Exchange does not propose to impose any device or end-user fee for the NYSE Amex-Only Vendors' distribution of NYSE Amex Realtime Reference Prices.

In addition, the Exchange proposes to establish as an alternative to the fixed monthly fee a fee of $.004 for each real-time reference price that a NYSE Amex-Only Vendor disseminates to its customers. The Exchange proposes to limit a NYSE Amex-Only Vendor's exposure under this alternative fee by setting $10,000, the same amount as the proposed fixed monthly rate, as the maximum fee that an NYSE Amex-Only Vendor would have to pay for real-time reference prices that it disseminates in any calendar month pursuant to the per-query fee.

In order to take advantage of the per-query fee, a NYSE Amex-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange will impose the per-query fee only on the dissemination of real-time reference prices. NYSE Amex-Only Vendors may provide delayed data services in the same manner as they do today.

The per-query charge is imposed on NYSE Amex-Only Vendors, not end-users, and is payable on a monthly basis. NYSE Amex-Only Vendors may elect to disseminate NYSE Amex Realtime Reference Prices pursuant to the per-query fee rather than the fixed monthly fee.

c. Justification of Fees

The proposed flat monthly fee and per-query fee for the NYSE Amex Realtime Reference Prices service enable Internet service providers and traditional vendors to contribute to the Exchange's operating costs in a manner that is appropriate for the distribution of last sale price information in the form taken by the proposed service.

In setting the level of the NYSE Amex Realtime Reference Prices fee, the Exchange took into consideration several factors, including:

(1) The fees that Nasdaq, NYSE and NYSE Arca are charging for similar services;

(2) Consultation with some of the entities that the Exchange anticipates will be the most likely to take advantage of the proposed service;

(3) The contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;

(4) The contribution that revenues accruing from the proposed fee will make to meet the overall costs of the Exchange's operations;

(5) The savings in administrative and reporting costs that the NYSE Amex Realtime Reference Prices service will provide to NYSE Amex-Only Vendors; and

(6) The fact that the proposed fees provide alternatives to existing fees under the CTA and Nasdaq/UTP Plans, alternatives that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the levels of the fixed monthly fee and the per-query fee are consistent with the approach set forth in the order by which the Commission approved ArcaBook fees for NYSE Arca.[5] In the ArcaBook Approval Order, the Commission stated that ''when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.''[6] It noted that if significant competitive forces apply to a proposal, the Commission will approve it unless a substantial countervailing basis exists.

NYSE Amex Realtime Reference Prices constitute ''non-core data.'' The Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes the product voluntarily.

In the case of NYSE Amex Realtime Reference Prices, both of the two types of competitive forces that the Commission described in the ArcaBook Approval Order are present: The Exchange has a compelling need to attract order flow and the product competes with a number of alternative products.

The Exchange must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as NYSE Amex Realtime Reference Prices. The Exchange hopes that NYSE Amex Realtime Reference Prices will enable vendors to distribute NYSE Amex last sale price data widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

In addition to the need to attract order flow, the availability of alternatives to NYSE Amex Realtime Reference Prices significantly constrain the prices at which the Exchange can market NYSE Amex Realtime Reference Prices. All national securities exchanges, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data, as well as the core data feed, are all sources of competition for NYSE Amex Realtime Reference Prices. Currently, the New York Stock Exchange, NYSE Arca and the Nasdaq Stock Market offer similar services.

The information available in NYSE Amex Realtime Reference is included in the CTA core data feed, which also includes the size of trades, as well as last sale information from other markets. Even though NYSE Amex Realtime Reference Prices omits size and provides prices that are not consolidated with those of other markets, investors may select it as a less expensive alternative to the CTA Plan's consolidated last sale price services for certain purposes. (Rule 603(c) of Regulation NMS requires vendors to make the core data feeds available to customers when trading and order-routing decisions can be implemented.)

d. Administrative Requirements

The Exchange proposes to require the NYSE Amex-Only Vendor to identify the NYSE Amex trade price by placing the text ''NYSE Amex Data'' in close proximity to the display of each NYSE Amex Realtime Reference Price or series of NYSE Amex Realtime Reference Prices, or by complying with such other identification requirement as to which NYSE Amex may agree.

The NYSE Amex-Only Vendor may make NYSE Amex Realtime Reference Prices available without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

e. Contracts

NYSE Amex proposes to allow NYSE Amex-Only Vendors to provide NYSE Amex Realtime Reference Prices without requiring the end-users to enter

[5] *See* Release [sic] No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (the ''ArcaBook Approval Order'').

[6] *Id.* at 74771.

into contracts for the benefit of the Exchange.

Instead, the Exchange proposes to require NYSE Amex-Only Vendors to provide a readily visible hyperlink that will send the end-user to a warning notice about the end-user's receipt and use of market data. The notice would be similar to the notice that vendors provide today when providing CTA delayed data services.

The Exchange will require NYSE Amex-Only Vendors to enter into the form of ''vendor'' agreement into which the CTA and CQ Plans require recipients of the Network A datafeeds to enter (the ''Network A Vendor Form''). The Network A Vendor Form will authorize the NYSE Amex-Only Vendor to provide the NYSE Amex Realtime Reference Prices service to its subscribers and customers.

The Network A Participants drafted the Network A Vendor Form as a one-size-fits-all form to capture most categories of market data dissemination. It is sufficiently generic to accommodate NYSE Amex Realtime Reference Prices. The Commission has approved the Network A Vendor Form.[7]

The Exchange will supplement the Network A Vendor Form with an *Exhibit C* that will provide above-described terms and conditions that are unique to the NYSE Amex Realtime Reference Prices service. The proposed *Exhibit C* is attached to the proposed rule change as *Exhibit 5.* The supplemental *Exhibit C* terms and conditions would govern:

- The restriction against providing the service in the context of a trading or order routing service;
- The replacement of end-user agreements with a hyperlink to a notice;
- The substance of the notice; and
- The ''NYSE Amex Data'' labeling requirement.

2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the ''Act'') for the proposed rule change are the requirement under Section 6(b)(4)[8] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)[9] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Amex Realtime Reference Prices service. In addition, the Exchange believes that the proposed fee would allow entities that provide market data to large numbers of investors, which are the entities most likely to take advantage of the proposed service, to make an appropriate contribution towards meeting the overall costs of the Exchange's operations.

The Exchange notes that its proposed fee compares favorably with the fees that Nasdaq, NYSE and NYSE Arca are charging for similar services. Because the proposed fee is substantially lower than those of Nasdaq, NYSE and NYSE Arca, it offers any vendor that wishes to provide its customers with a single market's data (as opposed to a more expensive consolidated data service) a less expensive alternative to Nasdaq, NYSE and NYSE Arca.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Amex Realtime Reference Prices proposes to provide an alternative to existing fees and does not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq, NYSE and NYSE Arca have commenced to make available. For those reasons, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has discussed the proposed rules change with those entities that the Exchange believes would be the most likely to take advantage of the proposed NYSE Amex Realtime Reference Prices service by becoming NYSE Amex-Only Vendors. While those entities have not submitted formal, written comments on the proposal, the Exchange has incorporated some of their ideas into the proposal and the proposed rule change reflects their input. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEAmex–2009–85 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for

[7] *See* Securities Exchange Act Release Nos. 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990) (File No. 4–281); 49185 (February 4, 2004), 69 FR 6704 (February 11, 2004) (SR–CTA/CQ–2003–01).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

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–NYSEAmex–2009–85 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30079 Filed 12–17–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Accelerated Delivery of Supplement to the Options Disclosure Document Reflecting Certain Changes to Disclosure Regarding Dividend Index Options

December 10, 2009.

March 26, 2009, The Options Clearing Corporation (''OCC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[1] five preliminary copies of a supplement to its options disclosure document (''ODD'') reflecting certain changes to disclosure regarding options on dividend indexes.[2] On November 10, 2009, the OCC submitted to the Commission five definitive copies of the supplement.[3]

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. Recently, the Chicago Board Options Exchange, Incorporated (''CBOE'') amended its rules to permit the listing and trading of options that overlie the S&P 500 Dividend Index.[4] The proposed supplement amends the ODD to accommodate this change by providing disclosure regarding dividend index options.[5]

Specifically, the proposed supplement to the ODD adds new disclosure regarding the characteristics of dividend index options. Further, the proposed supplement to the ODD adds new disclosure regarding the special risks of these options. The proposed supplement to the ODD also adds new disclosure stating that the options markets may use other methods than those specified in the ODD to set exercise prices. The proposed supplement is intended to be read in conjunction with the more general ODD, which, as described above, discusses the characteristics and risks of options generally.[6]

Rule 9b–1(b)(2)(i) under the Act[7] provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and protection of investors.[8] In addition, five copies of the definitive ODD, as amended or supplemented, must be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document is furnished to customers. The Commission has reviewed the proposed supplement and finds, having due regard to the adequacy of information disclosed and the public interest and protection of investors, that the proposed supplement may be furnished to customers as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[9] that definitive copies of the proposed supplement to the ODD (SR–ODD–2009–01), reflecting changes to disclosures regarding certain options on dividend indexes, as well as the other changes noted above, may be furnished to customers as of the date of this order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30081 Filed 12–17–09; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 240.9b–1.

[2] *See* letter from Jean M. Cawley, Senior Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Trading and Markets (''Division''), Commission, dated March 26, 2009.

[3] *See* letter from Jean M. Cawley, Senior Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated November 9, 2009.

[4] *See* Securities Exchange Act Release No. 61136 (December 10, 2009) (SR–CBOE–2009–022).

[5] The proposed November 2009 Supplement to the ODD supersedes and replaces the September 2008 supplement and amends the May 2007 and June 2008 supplement.

[6] The Commission notes that the options markets must continue to ensure that the ODD is in compliance with the requirements of Rule 9b–1(b)(2)(i) under the Act, 17 CFR 240.9b–1(b)(2)(i), including when future changes regarding dividend index options are made. Any future changes to the rules of the options markets concerning dividend index options would need to be submitted to the Commission under Section 19(b) of the Act. 15 U.S.C. 78s(b).

[7] 17 CFR 240.9b–1(b)(2)(i).

[8] This provision permits the Commission to shorten or lengthen the period of time which must elapse before definitive copies may be furnished to customers.

[9] 17 CFR 240.9b–1.

[10] 17 CBR 200.30–3(a)(39).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61154; File No. SR–ISE–2009–105]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Registered Representative Fee and an Options Regulatory Fee

December 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2009, the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to eliminate registered representative fees and institute a new transaction-based ''Options Regulatory Fee.'' The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the Commission's Web site at (*http://www.sec.gov*) at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change is based on a filing previously submitted by the Chicago Board Options Exchange (''CBOE'') that was effective on filing.[3] ISE proposes to amend its Schedule of Fees to eliminate registered representative fees and institute a new transaction-based ''Options Regulatory Fee.'' ISE rules require that members who do business with the public qualify and register their options principals and representatives. Each ISE member that registers an options principal and/or representative is assessed a registered representative fee (''RR Fee'') based on the action associated with the registration. RR Fees as well as other regulatory fees collected by the Exchange are intended to cover a portion of the cost of the Exchange's regulatory programs. RR Fees have been in place since ISE's inception in 2000 and remained unchanged until 2007.[4] There are annual fees as well as initial, transfer and termination fees. Today, all options exchanges, regardless of size, charge similar registered representative fees.

ISE believes the current RR Fee is not equitable. The options industry has evolved to a structure with many more Internet-based and discount brokerage firms. These firms have few registered representatives and thus pay very little in RR Fees compared to full service brokerage firms that have many registered representatives. More importantly, the regulatory effort the Exchange expends to review the transactions of each type of firm is not commensurate with the number of registered representatives that each firm employs.

Further, due to the manner in which RR Fees are charged, it is possible for a member firm to restructure its business to avoid paying these fees altogether. A firm can avoid RR Fees by terminating its ISE membership and sending its business to the Exchange through another member firm, even an affiliated firm that has many fewer registered representatives. Indeed, some firms have done just this to avoid paying these fees. If firms terminated their memberships to avoid RR Fees, the Exchange would suffer the loss of a major source of funding for its regulatory programs. The Exchange notes that at least three firms have terminated their membership to avoid RR Fees. The Exchange believes other firms may do the same unless the Exchange addresses its regulatory fee structure.

In order to address the inequity of the current regulatory fee structure and to curtail any further loss of memberships and by extension, loss of regulatory revenue, ISE proposes to eliminate the current RR Fee and adopt an Options Regulatory Fee (''ORF'') of $0.0035 per contract, with a minimum one-cent charge per trade. This fee would be assessed by the Exchange to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation (''OCC'') in the customer range, i.e., transactions that clear in the customer account of the member's clearing firm at OCC, regardless of the marketplace of execution. In other words, ISE would impose the ORF on all transactions executed by a member, even if the transactions do not take place on the Exchange.[5] The ORF would also be charged for transactions that are not executed by an ISE member but are ultimately cleared by an ISE member. In the case where an ISE member executes a transaction and an ISE member clears the transaction, the ORF would be assessed to the member who executed the transaction. In the case where a non-ISE member executes a transaction and an ISE member clears the transaction, the ORF would be assessed to the ISE member who clears the transaction.

The ORF would not be charged for member options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members.[6] The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. Based on the revenue model of the Exchange, member fees fund the bulk of the Exchange's operations and serve as the single-largest revenue source for the Exchange. Thus, the Exchange believes members are already paying their fair share of the costs of regulation.[7]

As noted, the ORF would replace RR Fees, which relate to a member's customer business. Further, RR Fees constituted the single-largest fee assessed that is related to customer trading activity (in that the Exchange generally does not charge customer transaction fees), the Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to its members' activities supports applying the ORF to transactions cleared but not executed by a member. The Exchange's regulatory responsibilities are the same regardless of whether a member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activities, including performing surveillance for position limit violations, manipulation, frontrunning, contrary exercise advice violations and insider trading.[8] These activities span across multiple exchanges.

The Exchange believes the initial level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating members. In addition, the projected amount of revenue that the ORF is intended to generate for the Exchange, on an annual basis, is correlated to the amount of revenue that the RR Fee was intended to generate at the time the RR Fee was first announced by the Exchange in

[3] *See* Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) (SR–CBOE–2008–105).

[4] *See* Securities Exchange Act Release No. 55899 (June 12, 2007), 72 FR 33794 (June 19, 2007) (SR–ISE–2007–30).

[5] The ORF would apply to all customer orders executed by a member on the Exchange. Exchange rules require each member to submit trade information in order to allow the Exchange to properly prioritize and match orders and quotations and report resulting transactions to the OCC. *See* ISE Rule 712. The Exchange represents that it has surveillances in place to verify that members comply with the rule.

[6] For example, most non-broker-dealer customers are not charged transaction fees to trade on the Exchange.

[7] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may propose to impose the ORF or a separate regulatory fee on members if the Exchange deems it advisable.

[8] The Exchange also participates in The Options Regulatory Surveillance Authority (''ORSA'') national market system plan and in doing so shares information and coordinates with other exchanges designed to detect the unlawful use of undisclosed material information in the trading of securities options. ORSA is a national market system comprised of several self-regulatory organizations whose functions and objectives include the joint development, administration, operation and maintenance of systems and facilities utilized in the regulation, surveillance, investigation and detection of the unlawful use of undisclosed material information in the trading of securities options. The Exchange compensates ORSA for the Exchange's portion of the cost to perform insider trading surveillance on behalf of the Exchange. The ORF will cover the costs associated with the Exchange's arrangement with ORSA.

2007. Since that time, however, the number of registered representatives has continued to materially decline, year over year. Customer transaction volume, on the other hand, on the Exchange and in the options industry overall, has, during that same period since 2007, materially and continuously increased, year over year. As a result, the spread between the amount of revenue collected under the RR Fee and the Exchange's actual costs in administering its regulatory program has continued to widen. As discussed herein, the Exchange believes that the number of declining registered representatives is a result of firms restructuring their business so as to avoid paying the RR Fee, to the extent that the fee has caused a drop of nearly 25% in the number of registered representatives in 2008, and cumulatively more than 35% in 2009. Accordingly, by correlating the amount of revenue to be generated under the ORF to the amount of revenue that was intended to be collected by the RR Fee at the time it was announced by the Exchange in 2007, the Exchange believes the amount of the ORF is fair and reasonably allocated because it is a closer approximation to the Exchange's actual costs in administering its regulatory program.

The ORF would be collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. The Exchange expects that member firms will pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by Self Regulatory Organizations (''SROs'') to help the SROs meet their obligations under Section 31 of the Exchange Act.

The ORF is designed to recover a material portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, as well as policy, rulemaking, interpretive and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover substantially all of the Exchange's regulatory costs. At present, the total amount of regulatory fees collected by the Exchange is less than the regulatory costs incurred by the Exchange on an annual basis. RR Fees make up the largest part of the Exchange's total regulatory fee revenue. The Exchange generally does not charge customer transaction fees. The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The Exchange would monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange expects to monitor regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines regulatory revenues exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission. The Exchange would notify members of adjustments to the ORF via a Regulatory Information Circular.

The Exchange believes the proposed ORF is equitably allocated because it would be charged to all members on all their customer options business. The Exchange believes the proposed ORF is reasonable because it will raise revenue related to the amount of customer options business conducted by members, and thus the amount of Exchange regulatory services those members will require, instead of how many registered representative a particular member employs.[9]

As a fully-electronic exchange without a trading floor, the amount of resources required by ISE to surveil non-customer trading activity is significantly less than the amount of resources the Exchange must dedicate to surveil customer trading activity. This is because surveilling customer trading activity is much more labor-intensive and requires greater expenditure of human and technical resources than surveilling non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (e.g., market maker) of its regulatory program.

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by its members and their associated persons with the Exchange Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, frontrunning and contrary exercise advice violations.[10] Also, ISE and the other options exchanges are required to populate a consolidated options audit trail (''COATS'') system in order to surveil member activities across markets.[11]

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG''),[12] the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange's participation in ISG helps it to satisfy the Exchange Act requirement that it have coordinated surveillance with markets on which security futures are traded and markets on which any security underlying security futures are traded to detect manipulation and insider trading.[13]

The Exchange believes that charging the ORF across markets will avoid having members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share of regulation. If the ORF did not apply to activity across markets then members would send their orders to the least cost, least regulated exchange. Other exchanges could impose a similar fee on their member's activity, including the activity of those members on ISE.[14]

[9] The Exchange expects that implementation of the proposed ORF will result generally in many traditional brokerage firms playing less regulatory fees while Internet and discount brokerage firms will pay more.

[10] The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See* Securities Exchange Act Release No. 56941 (December 11, 2007).

[11] COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct the market promptly to effectively surveil certain rules.

[12] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[13] *See* Exchange Act Section 6(h)(3)(I).

[14] The Exchange notes that the Chicago Board Options Exchange (''CBOE'') currently assesses an options regulatory fee similar to the one proposed

The Exchange notes that there is established precedent for an SRO charging a fee across markets, namely, FINRA's Trading Activity Fee [15] and the CBOE's ORF.[16] While the Exchange does not have all the same regulatory responsibilities as FINRA, the Exchange believes that, like the CBOE, its broad regulatory responsibilities with respect to its members' activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike FINRA's Trading Activity Fee, the ORF would apply only to a member's customer options transactions.

The Exchange has designated this proposal to be operative on January 1, 2010.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Exchange Act'') for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the ORF is objectively allocated to ISE members because it would be charged to all members on all their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those member firms that require more Exchange regulatory services based on the amount of customer options business they conduct.

The Commission has addressed the funding of an SRO's regulatory operations in the Concept Release Concerning Self-Regulation [17] and the release on the Fair Administration and Governance of Self-Regulatory Organizations.[18] In the Concept Release, the Commission states that: ''Given the inherent tension between an SRO's role as a business and a regulator, there undoubtedly is a temptation for an SRO to fund the business side of its operations at the expense of regulation.'' [19] In order to address this potential conflict, the Commission proposed in the Governance Release rules that would require an SRO to direct monies collected from regulatory fees, fines, or penalties exclusively to fund the regulatory operations and other programs of the SRO related to its regulatory responsibilities.[20] The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will approximately be equal to the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [21] and paragraph (f)(2) of Rule 19b-4 [22] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–105 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–ISE–2009–105. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2009–105 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

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herein, which fee is also assessed on the trading activity of a CBOE member on ISE.

[15] *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003).

[16] *See supra* Note 1 [sic].

[17] *See* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (''Concept Release'').

[18] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (''Governance Release'').

[19] Concept Release at 71268.

[20] Governance Release at 71142.

[21] 15 U.S.C. 78s(b)(3)(A)(ii).

[22] 17 CFR 240.19b–4(f)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61156; File No. SR–NYSEArca–2009–109]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Revising Its Telephone Policies

December 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on December 3, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its policies governing the use of telephones on the Trading Floor. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to revise NYSE Arca Rule 6.2(h) governing the use of telephones on the Trading Floor. The proposed revisions of Rule 6.2(h) are modeled on NYSE Amex Options Rule 902NY(i).[5]

The Exchange proposes to simplify and expedite its telephone registration process by allowing OTP Holder representatives to register their telephones by submitting an e-mail to the NYSE Arca Options Operations Department. This policy is consistent with NYSE Amex Options Rule 902NY(h)(i)(1).

In addition, the Exchange notes that separate from the registration and use of telephones, the Exchange shall retain the authority to review and approve, prior to their use, any alternative communication device (including but not limited to devices offering capabilities such as e-mail, instant messaging, texting, or Internet-supported communications). Therefore, according to proposed Rule 6.2(h)(1): No OTP Holder, OTP Firm, or employee thereof may employ any alternative communication device (other than telephones as described herein) on the Trading Floor without prior approval of the Exchange.

The Exchange also proposes to combine the various designations in Rule 6.2(h)(4)–(7) into a single section applying to all OTP Holders and Employees of OTP Firms. In doing so, the Exchange seeks to clarify and simplify its policy without substantively altering the scope of the rule.[6] This change will also result in the renumbering of the subsections under Rule 6.2(h). This change is consistent with NYSE Amex Options Rule 902NY(i).

The Exchange also proposes to modify Rule 6.2(h)(5)(C) in order to adopt the recently approved structure of NYSE Amex Rule 902NY(i)(4)(C) pertaining to broker representations of telephonic orders to the trading crowd. Currently, Section (h)(5)(C) sets forth that a Floor Broker in a trading crowd who receives a telephonic order may represent the order in the trading crowd only if an order ticket was first time-stamped in the OTP Holder or OTP Firm's booth. The order ticket must also be taken to the Floor Broker in the trading crowd immediately after it is prepared. The new policy avoids this unnecessary process by allowing Floor Brokers to represent a telephonic order to the trading crowd so long as the order is immediately recorded into the EOC or the Electronic Tablet. However, in cases where the exception set forth in Rule 6.67(d)(1) applies, the EOC/Electronic Tablet Contingency Reporting Procedures will be in effect in accordance with Rule 6.67(d)(2).[7] In implementing this new policy, the Exchange seeks to keep pace with the technologies utilized on its options floor.

The Exchange proposes to remove all obsolete references to LMM phones and General Access Phones. These phones were provided by the Exchange and located at various locations on the options floor. The Exchange no longer supports these phones, and as such, they are no longer in operation.

In addition, the Exchange proposes to update Rule 6.2(h)(9), Telephone Records, in order to increase the record retention period to three years. The Exchange proposes to require that OTP Holders and OTP Firms retain said records in an accessible place for the first two years. This requirement is consistent with the retention period of Securities and Exchange Commission Rule 17a–4.[8] The Rule will also be renumbered as 6.2(h)(5).

Consistent with NYSE Amex Rule 902NY(i)(6), the Exchange further proposes to add Rule 6.22(h)(6) [sic],[9] Revocation of Registration, which establishes the Exchange's authority to deny, limit or revoke an OTP Holder's permission to use of any registered telephone on the Trading Floor. Although an OTP Holder need only register with the Exchange, prior to use, any telephone to be used on the Trading Floor, the Exchange retains the right to

[5] *See* Securities Exchange Act Release No. 59939 (May 19, 2009), 74 FR 25779 (May 29, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change, SR–NYSEAmex–2009–17, and Amendment No. 1 Thereto Revising Rules Governing the Use of Telephones on the Options Trading Floor).

[6] The Exchange is not proposing to require OTP Holders and OTP Firms to register by category of user. Such a requirement is inapplicable since (i) the proposed rule applies to OTP Holders, OTP Firms, and all employees thereof, regardless of category and (ii) such a requirement was a historical response to capacity limitations (which no longer apply) thereby allowing the Exchange to restrict use by certain categories of users if capacity issues arose.

[7] Rule 6.67(d)(1) states in pertinent part, ''The EOC or Electronic Tablet entry requirement provision of subsection (c) will not apply to any EOC or Electronic Tablet system disruption or malfunction as confirmed by a Trading Official.'' Rule 6.67(d)(2) provides a procedure for reporting during periods of system disruption of malfunction.

[8] This proposed rule is modeled on NYSE Amex Rule 902(i)(5).

[9] The Exchange intended to refer to Rule 6.2(h)(6).

deny, limit, or revoke an OTP Holder's permission. Specifically, according to the proposed rule, the Exchange may deny, limit or revoke registration of any telephone whenever it determines that use of such device is inconsistent with the public interest, the protection of investors, or just and equitable principles of trade, or such device has been or is being used to facilitate any violation of the Securities Exchange Act of 1934, as amended, or rules thereunder, or the Exchange rules.

The Exchange also proposes to update subsections (h)(13) and (k)(i)(13) of Rule 10.12, Minor Rule Plan, in order to replace obsolete references to prior Exchange policy and to add text designed to specifically address violations of Exchange Rule 6.2(h) as revised herein.

Finally, the Exchange proposes to delete Rule 11.15 as it is duplicative of proposed Rule 6.2(h)(1) which states:

No OTP Holder, OTP Firm, or employee thereof may employ any alternative communication device (other than telephones as described herein) on the Trading Floor without prior approval of the Exchange.

The Exchange also proposes to remove the reference to Rule 11.15 in Rule 6.1(e).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [10] of the Act, in general, and furthers the objectives of Section 6(b)(5),[11] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest, in that it proposes to modernize and clarify rules for the use of telephones and other communication devices on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested the Commission to waive the 30-day operative delay to the extent that the proposal will allow NYSE Arca to: (i) Modernize its rules regarding telephones, consistent with other market centers; and (ii) eliminate any unnecessary discrepancies among affiliated markets governing the use of telephones by their respective market participants, without delay. The Commission notes that the proposal is closely based on NYSE Amex Rule 902NY(i).[14] The Commission hereby grants the Exchange's request and believes that such waiver is consistent with the protection of investors and the public interest.[15] Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] *See* Securities Exchange Act Release No. 59939 (May 19, 2009), 74 FR 25779 (May 29, 2009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Revising Rules Governing the Use of Telephones on the Options Trading Floor).

[15] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–109 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–NYSEArca–2009–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2009–109 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30085 Filed 12–17–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61160; File No. SR–FINRA–2009–088]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Waiver and Credit of Certain FINRA/Nasdaq Trade Reporting Facility and OTC Reporting Facility Fees

December 14, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as ''establishing or changing a due, fee or other charge'' under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to waive and issue a credit for fees that were charged to FINRA members under FINRA Rules 7620A and 7710 for the submission of ''as/of'' trade reports to the FINRA/Nasdaq Trade Reporting Facility (''FINRA/Nasdaq TRF'') and the OTC Reporting Facility (''ORF''), respectively, for eight days in the months of August and September 2009. The proposed rule change does not require amendments to any FINRA rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to FINRA Rules 7620A and 7710, members are charged fees for trade reporting to the FINRA/Nasdaq TRF and ORF, respectively, and the fee for the submission of late trade reports, including ''as/of'' reports, is higher than the fee for the submission of timely trade reports. ''As/of'' reports are reports of trades that were executed on a date prior to the date they were reported.

During the months of August and September 2009, various Automated Confirmation Transaction Service (''ACT'') technology issues impacted trade reporting to the FINRA/Nasdaq TRF and the ORF for a period of eight days: August 3, August 4, August 5, August 17, August 21, September 16, September 25 and September 28. Due to the ACT technology issues, members were unable to report trades on trade date and thus incurred higher than normal reporting charges due to the higher number of ''as/of'' reports that they were compelled to submit.

Because the higher charges were the result of an ACT technology issue and not the fault of the member, FINRA is proposing to waive the fees for ''as/of'' trade reports submitted on each day following the day on which the ACT technology issues occurred. Specifically, FINRA will waive the ''as/of'' report fees for the following days in 2009: August 4, August 5, August 6, August 18, August 24, September 17, September 28 and September 29. Members will be issued a credit for the ''as/of'' trade report fees charged on these dates on a future invoice.[5] FINRA has filed the proposed rule change for immediate effectiveness. The operative date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with Section 15A(b)(5) of the Act,[6] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed waiver and credit of the ''as/of'' reporting fees is fair and equitable in that it will apply uniformly to all FINRA members that submitted ''as/of'' trade reports to the FINRA/Nasdaq TRF and ORF on the designated dates.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and paragraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] FINRA notes that a similar proposal to waive and issue a credit for certain cancel fees was the subject of a recent filing by NASDAQ OMX PHLX, Inc. *See* Securities Exchange Act Release No. 60853 (October 21, 2009), 74 FR 55594 (October 28, 2009) (Notice of Filing and Immediate Effectiveness of File No. SR–PHLX–2009–89).

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–088 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–FINRA–2009–088. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–FINRA–2009–088 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30086 Filed 12–17–09; 8:45 am]

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[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61155; File No. SR–MSRB–2009–18]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Amendments to Rule G–37 (Political Contributions and Prohibitions on Municipal Securities Business) and Rule G–8 (Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers)

December 11, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2009, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change consisting of proposed amendments to Rule G–37 (political contributions and prohibitions on municipal securities business) and Rule G–8 (books and records to be made by brokers, dealers and municipal securities dealers). The MSRB requested that the proposed rule change become effective on, and would apply solely to contributions made on or after, the first business Monday at least five business days after Commission approval.

The text of the proposed rule change is available on the MSRB's Web site (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed amendments to Rule G–37 would require the public disclosure of contributions to bond ballot campaigns made by dealers, municipal finance professionals (''MFPs''), their political action committees (''PACs'') and non-MFP executive officers on MSRB Form G–37. Dealers would be required to report on revised Form G–37 the official name of each bond ballot campaign receiving contributions during such calendar quarter, the jurisdiction (including city/county/State or political subdivision) by or for which municipal securities, if approved, would be issued, the contribution amount made and the category of contributor. The proposal would provide a *de minimis* exception from the reporting of contributions on Form G–37 made by an MFP or non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if all contributions by such person to such bond ballot campaign, in total, do not exceed $250 per ballot initiative. The amendments would parallel the existing disclosure requirements for contributions to issuer officials and State and local political parties. Such amendments would not, however, provide for a ban on municipal securities business as a result of contributions to bond ballot campaigns.

The proposed amendments to Rule G–8 would require dealers to create and maintain records of the non-*de minimis* contributions to bond ballot campaigns that would be required to be disclosed on Form G–37 under the proposed amendments to Rule G–37.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[3] which provides that the MSRB's rules shall:

> [B]e designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78o–4(b)(2)(C).

market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will protect investors and the public interest and will assist with preventing fraudulent and manipulative acts and practices by allowing the public and regulators to monitor dealer contributions to bond ballot campaigns, thereby further reducing the opportunity for pay-to-play practices in the municipal securities market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On June 22, 2009, the MSRB published a notice requesting comment on draft amendments to Rule G–37.[4] The MSRB received comments from seven commentators.[5] Three of the seven commentators were generally supportive of the proposed change, with certain exceptions detailed below.[6] Two of the seven commentators were against the proposed change.[7] Two other commentators did not express an opinion regarding whether they supported the proposed change.[8]

General. Morgan Stanley supported the proposed change but requested that the MSRB consider having bond ballot campaign contributions result in a ban on municipal securities business. SIFMA also supported the proposed change and noted that ''there are no uniform disclosure methodologies or transparency vehicles for bond ballot measure campaign contributions across the various State and local jurisdictions that may have bond ballot measures.'' SIFMA further stated ''the transparency this rule change will create would reap benefits that outweigh any additional compliance burdens and costs for the municipal securities dealer community.''

Piper supported the disclosure of contributions to bond election campaigns but not those by individual MFPs and executive officers. Piper noted it is not aware that contributions to bond ballot measures by individuals are prevalent and stated that such contributions are likely subject to State and local reporting requirements. Stone & Youngberg stated that the proposed change may seem a way ''to keep in check the appearance of impropriety in the municipal marketplace'' but that, unless the MSRB requires disclosures or bans with respect to all contributions of time or money that are given by any employee at banks and dealer firms to entities that issue municipal bonds, the rules will continue to favor certain participants in the municipal finance business. BMO stated that it was not sure of the rationale for disclosure of dealer contributions to bond ballot campaigns.

After reviewing the comments, the MSRB is filing the proposed rule change to require the public disclosure of dealer contributions to bond ballot campaigns. The MSRB believes, as noted by SIFMA, that the proposed rule change would create a uniform disclosure regime to track and make available to public scrutiny bond ballot campaign contributions by dealers in the municipal securities market, thereby increasing available information to municipal securities market participants and the general public. The MSRB does not believe that a ban on municipal securities business as a result of a contribution to a bond ballot campaign is warranted at this time but notes that the disclosures provided for under the proposed rule change will assist in determining, in the future, whether it would be appropriate to consider further action in this area.

The MSRB does not agree with Piper's comments that the proposed rule change should not require the disclosure of contributions by individual MFPs and executive officers since the MSRB does not believe that a satisfactory basis for providing different disclosure requirements for bond ballot contributions as compared to other political contributions or payments as is currently required under Rule G–37 has been established. The MSRB notes that patterns and practices observed through the disclosures that would be required under the proposed rule change could serve as a basis for making such differentiation in connection with any further regulatory action in this area in the future, if appropriate.

In-Kind Contributions. SIFMA stated that the use of in-house resources should not be reported because the valuation of such services may be difficult to ascertain. BMO also noted that, if the proposed amendments are approved, they ''should either only require reporting of cash contributions or require much more general information as to in-kind services as opposed to cash contributions'' because the requirement to value and report in-kind contributions is ''fraught with impossible practical difficulties.'' The RBDA similarly stated, ''it would be extraordinarily difficult in many cases for dealers to segregate in-kind services for bond ballot campaigns from other services provided in the context of underwriting bond issues and to value those services accurately.'' Baum requested that in-kind services be treated differently from cash contributions because ''measurement of in-kind contributions may represent a real challenge * * *.''

The existing definition of contribution in Rule G–37 is not limited to cash payments and generally would cover anything of value, including in-kind contributions.[9] The MSRB has determined not to amend the term contribution and dealers would be required to report such contributions to bond ballot campaigns just as they are currently required to report such non-cash contributions under Rule G–37 with respect to political contributions to issuer officials.[10] The MSRB believes

[4] *See* MSRB Notice 2009–35 (June 22, 2009).

[5] *See* letters from Robert J. Stracks, Counsel, BMO Capital Markets (''BMO'') to Leslie Carey, dated August 7, 2009; Robert K. Dalton, Vice Chairman, George K. Baum & Company (''Baum'') to Leslie Carey, dated July 30, 2009, along with supplemental letter from Kent J. Lund, Executive Vice-President, Chief Compliance Officer to Leslie Carey, dated August 7, 2009; Stratford Shields, Managing Director, Morgan Stanley (''Morgan Stanley'') to Leslie Carey, dated July 30, 2009; Frank Fairman, Managing Director and Rebecca Lawrence, Assistant General Counsel, Piper Jaffray (''Piper'') to Leslie Carey, dated August 7, 2009; Michael Decker, Co-Chief Executive Officer and Mike Nichols, Co-Chief Executive Officer, Regional Bond Dealers Association (''RBDA'') to Leslie Carey, dated August 7, 2009; Leslie Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA'') to Leslie Carey, dated August 7, 2009; and Kenneth E. Williams, President, Chief Executive Officer, Stone & Youngberg (''Stone & Youngberg'') to Leslie Carey dated August 13, 2009.

[6] *See* letters from Morgan Stanley, Piper and SIFMA.

[7] *See* letters from Baum and RDBA.

[8] *See* letters from BMO and Stone & Youngberg.

[9] Contribution is defined in Rule G–37(g) as any gift, subscription, loan, advance, or deposit of money or anything of value made: (A) For the purpose of influencing any election for Federal, State or local office; (B) for payment of debt incurred in connection with any such election; or (C) for transition or inaugural expenses incurred by the successful candidate for State or local office.

[10] The MSRB has previously provided guidance regarding the treatment of contributions as the use of dealer resources or the incurrence of expenses by dealers in connection with a political campaign. The MSRB has made clear that Rule G–37 does not prohibit or limit individuals from providing volunteer services in support of an issuer official so long as dealer resources were not used, and has also noted that certain incidental expenses incurred by such individual would generally not be treated as a contribution. *See* Rule G–37 Question and Answers II.18 (May 24, 1994) and II.19 (August 18, 1994). These principles would apply equally to

the public disclosure of such contributions, including cash and in-kind services, will allow public scrutiny of such contributions and the potential connection between such contributions and the awarding of municipal securities business.

Constitutionality. Baum and the RBDA did not support the proposed change that would require disclosure of bond ballot campaign contributions and noted that such contributions do not have an element of pay-to-play that may exist for contributions to campaigns for political office because, for bond ballot measures, no individual politician benefits directly from the outcome of a bond ballot election. They also asserted that bond ballot campaign contributions are subject to strict scrutiny for possible violations of the First Amendment, citing *Dallman et al.* v. *Ritter et al.*[11]

Dallman concerned the constitutionality of an amendment to Colorado's constitution, passed by voter election in Colorado in November 2008, which prohibits contributions to promote or influence a bond ballot issue election by a person wishing to qualify for a sole source government contract relating to the ballot issue. Plaintiffs claimed that the amendment violated their First Amendment rights to free speech and association. The court stated that, ''the part of Amendment 54 that bans those subject to it from contributing to ballot measure campaigns is subject to strict scrutiny. A vote for or against a ballot measure is an exercise of free speech, and an economic contribution to a committee designed to support or oppose a ballot measure is similarly of constitutional magnitude.'' [12] The court then determined that the amendment to prohibit bond ballot measure contributions was not narrowly tailored to advance a compelling state interest and was unconstitutional.

The MSRB believes that the requirement to provide public disclosure of contributions to bond ballot campaigns does not hamper or interfere with an individual's ability to be involved with and/or support issues related to bond ballot campaigns. The MSRB does not believe the proposed rule change will impinge upon the First Amendment rights of individuals and/or firms that will be responsible for providing disclosure of bond ballot measure contributions [13] because the proposed rule change would only require disclosure and would not prohibit contributions, as was at issue in *Dallman.* Disclosure obligations do not present the same constitutional issues as do direct or indirect prohibitions or limitations on contributions.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2009–18 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–MSRB–2009–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2009–18 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30084 Filed 12–17–09; 8:45 am]

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individuals providing volunteer services in connection with a bond ballot campaign.

[11] Findings of Fact, Conclusions of Law and Order Entering Preliminary Injunction issued in *Dallman et al.* v. *William Ritter and Rich L. Gonzales and Daniel Ritchie et al.* v. *Bill Ritter and Rich Gonzales* (Case No. 09CV1188 consolidated with 09CV1200), (D. Colo. 2009) [hereinafter *Dallman*].

[12] *Dallman,* p. 19.

[13] In *Blount* v. *Securities and Exchange Commission,* 61 F.3d 938, 948 (DC Cir. 1995), the District Court determined that existing Rule G–37 advanced a compelling governmental interest to protect investors that did not abridge First Amendment rights and stated that ''municipal finance professionals are not in any way restricted from engaging in the vast majority of political activities, including making direct expenditures for the expression of their views.''

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61145; File No. SR–NYSE–2009–120]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Changes in NYSE Realtime Reference Prices Service

December 10, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 27, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes (1) To add data elements to its ''NYSE Realtime Reference Prices'' service, (2) to reduce the fixed monthly fee that applies to that service and (3) to add a usage-based fee alternative for that service. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In File No. SR–NYSE–2009–42 (the ''NYSE Realtime Reference Prices Filing''),[4] the Exchange established a fixed monthly fee for its NYSE-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange. The NYSE Realtime Reference Prices service provides a low-cost service that makes real-time prices widely available to many millions of casual investors, provides vendors with a real-time substitute for delayed prices, and relieves vendors of all administrative burdens.

The service allows Internet service providers, traditional market data vendors, and others (''NYSE-Only Vendors'') to make available NYSE Realtime Reference Prices on a real-time basis.[5] NYSE Realtime Reference Prices information includes last sale prices for all securities that are traded on the Exchange.

The Exchange proposes to make the following changes to the service and its fees:

a. Data Elements

Currently, the NYSE Realtime Reference Price Service includes only prices. It does not include the size of each trade and does not include bid/asked quotations. For each security, the Exchange is proposing to add the following data elements to the service:

- High price.
- Low price.
- Cumulative volume.

The Exchange anticipates that it will update these data elements every second, though initially it will update them once per minute. A security's high (low) price will reflect the highest (lowest) price at which the security has traded on the Exchange during the trading session through the point in time at which it is disseminated. Further, the cumulative volume will reflect a security's aggregate volume during a trading session through the point in time at which it is last disseminated. The Exchange believes that adding these data elements will make the product more attractive to the customers of NYSE-Only Vendors.

b. Reduction in the Fixed Monthly Fee

The NYSE Realtime Reference Price service features a flat, fixed monthly vendor fee of $70,000 and no user-based fees. For that fee, the NYSE-Only Vendor may provide unlimited NYSE Realtime Reference Prices to an unlimited number of the NYSE-Only Vendor's subscribers and customers without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The Exchange has now had experience with the product and has received feedback from its customers. As a result of the comments of the Exchange's customers, the response to the product from the vendors most likely to subscribe to the product, and the past year's market corrections, the Exchange is now proposing to reduce the fixed monthly fee to $60,000. In addition, in combination with the proposed usage-based fee and the proposed addition of new data elements to the product, the Exchange hopes that the fee reduction will allow the Exchange to broaden the universe of vendors that will find the product appropriate for their business models.

The Exchange believes that the proposed reduced fee will enable Internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution. The Exchange further believes that the proposed reduction in the fixed monthly fee for the NYSE Realtime Reference Prices service will make the product more attractive to vendors. An increase in the number of vendors that determine to provide free access to NYSE Realtime Reference prices to their Internet users would benefit the investment community. The fee reduction will also respond to the price competition provided by alternative exchanges, ECNs and the market for delayed data. In addition, it will better reflect the perceived value of the NYSE product and provide a more equitable allocation of the Exchange's overall costs to users of its facilities.

c. Usage-Based Fee

The Exchange proposes to establish as an alternative to the fixed monthly fee a fee of $.004 for each real-time reference price that a NYSE-Only Vendor disseminates to its customers. The Exchange proposes to limit a NYSE-Only Vendor's exposure under this alternative fee by setting $60,000, the same amount as the proposed fixed monthly rate, as the maximum fee that an NYSE-Only Vendor would have to pay for real-time reference prices that it disseminates in any calendar month pursuant to the per-query fee.

In order to take advantage of the per-query fee, a NYSE-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange will impose the per-query fee only on the dissemination of real-time reference prices. NYSE-Only Vendors may provide delayed data services in the same manner as they do today.

The per-query charge is imposed on NYSE-Only Vendors, not end-users, and is payable on a monthly basis. Because it represents a new and additional alternative to the monthly fixed fee, NYSE-Only Vendors may elect to disseminate NYSE Realtime Reference

[4] *See* Securities Exchange Act Release No. 34–60004 (May 29, 2009), 74 FR 26905 (June 4, 2009) (File No. SR–NYSE–2009–42) (the ''Approval Order'').

[5] The Exchange notes that it makes the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

Prices pursuant to the per-query fee rather than the fixed monthly fee.

d. Justification of Fees

The NYSE Realtime Reference Prices service enables Internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution. Reducing the flat monthly fee and adding a per-query payment option will reduce the costs of the service to those Internet service providers and traditional vendors. For the reasons explained above, the Exchange believes that this will enable NYSE Realtime Reference Prices vendors to make a more appropriate contribution to the Exchange's operating costs.

In re-setting the level of the NYSE Realtime Reference Prices flat monthly fee and in establishing the per-query fee, the Exchange took into consideration several factors, including:

(1) The fees that Nasdaq and NYSE Arca are charging for similar services and that NYSE Amex has proposed to charge;

(2) Consultation with some of the entities that currently receive the service or that the Exchange anticipates may commence to take advantage of the service;

(3) The contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;

(4) The contribution that revenues accruing from the proposed fees will make to meet the overall costs of the Exchange's operations;

(5) The savings in administrative and reporting costs that the NYSE Realtime Reference Prices service will provide to NYSE-Only Vendors; and

(6) The fact that the proposed fees provide even more attractive alternatives to existing fees under the CTA Plan than the current flat fee, alternatives that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the levels of the fixed monthly fee and the per-query fee are consistent with the approach set forth in the order by which the Commission approved ArcaBook fees for NYSE Arca.[6] In the ArcaBook Approval Order, the Commission stated that ''when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.''[7] It noted that if significant competitive forces apply to a proposal, the Commission will approve it unless a substantial countervailing basis exists.

NYSE Realtime Reference Prices constitute ''non-core data.'' The Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes the product voluntarily.

In the case of NYSE Realtime Reference Prices, both of the two types of competitive forces that the Commission described in the ArcaBook Approval Order are present: The Exchange has a compelling need to attract order flow and the product competes with a number of alternative products.

The Exchange must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as NYSE Realtime Reference Prices. The Exchange hopes that NYSE Realtime Reference Prices will enable vendors to distribute NYSE last sale price data widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

In addition to the need to attract order flow, the availability of alternatives to NYSE Realtime Reference Prices significantly constrain the prices at which the Exchange can market NYSE Realtime Reference Prices. All national securities exchanges, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data, as well as the core data feed, are all sources of competition for NYSE Realtime Reference Prices. Currently, NYSE Arca and Nasdaq offer similar services. (In addition, the Exchange anticipates that NYSE Amex will soon file for approval of a counterpart product.)

The information available in NYSE Realtime Reference is included in the CTA core data feed, which also includes the size of trades, as well as last sale information from other markets. Even though NYSE Realtime Reference Prices omits size and provides prices that are not consolidated with those of other markets, investors may select it as a less expensive alternative to the CTA Plan's consolidated last sale price services for certain purposes. (Rule 603(c) of Regulation NMS requires vendors to make the core data feeds available to customers when trading and order-routing decisions can be implemented.)

e. Amendment to *Exhibit C*

In providing NYSE Realtime Reference Prices, the Exchange supplements the standard Network A Vendor Form with an *Exhibit C* that provides certain terms and conditions that are unique to the NYSE Realtime Reference Prices service, such as the replacement of end-user agreements with a hyperlink to a notice and a labeling requirement. One of those supplemental conditions provides that the NYSE-Only Vendor will only distribute last sale prices as part of the service. Because this filing proposes to expand the permissible universe of data elements that a NYSE-Only Vendor may disseminate, the Exchange proposes to amend the Exhibit C. The proposed revised version of *Exhibit C* is attached to the proposed rule change as *Exhibit 4* and *Exhibit 5. Exhibit 4* is marked to show the proposed changes to the current version of *Exhibit C. Exhibit 5* is a clean, unmarked version.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for the proposed rule change is the requirement under Section 6(b)(4)[8] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)[9] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Realtime Reference Prices service. In addition, the Exchange believes (1) that the proposed fee reduction would allow entities that provide market data to large numbers of investors to make an appropriate contribution towards meeting the overall costs of the Exchange's operations and (2) that the proposed per-query fee would provide pricing flexibility to entities that determine to provide the NYSE Realtime Reference Prices service.

[6] *See* Release [sic] No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca-2006–21) (the ''ArcaBook Approval Order'').

[7] *Id.* at 74771.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Realtime Reference Prices proposes to reduce an existing fee of the Exchange (the flat monthly fee) and to provide an alternative (the per-query fee) to the existing fee. It would not raise or rescind any existing fees. It amounts to a competitive response to the products that Nasdaq and NYSE Arca make available and that NYSE Amex has proposed to make available. For those reasons, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NYSE–2009–120 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–120. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–120 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30080 Filed 12–17–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61143; File No. SR–NYSEArca–2009–108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Modifying the NYSE Arca Realtime Reference Prices Service

December 10, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 1, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes (1) to add data elements to its "NYSE Arca Realtime Reference Prices" service and (2) to add a usage-based fee alternative for that service. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In File No. SR–NYSEArca–2009–32 (the "NYSE Arca Realtime Reference Prices Filing"),[4] the Exchange established a fixed monthly fee for its NYSE Arca-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange. The NYSE Arca Realtime Reference Prices service provides a low-cost service that makes real-time prices widely available to many millions of casual investors, provides vendors with a real-time substitute for delayed prices, and relieves vendors of all administrative burdens.

The service allows internet service providers, traditional market data vendors, and others ("NYSE Arca-Only Vendors") to make available NYSE Arca

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

[4] *See* Securities Exchange Act Release No. 34–60002 (May 29, 2009), 74 FR 26901 (June 4, 2009) (File No. SR–NYSEArca–2009–32) (the "Approval Order").

Realtime Reference Prices on a real-time basis.[5] NYSE Arca Realtime Reference Prices information includes last sale prices for all securities that are traded on the Exchange.

The Exchange proposes to make the following changes to the service and its fees:

a. Data Elements

Currently, the NYSE Arca Realtime Reference Price service includes only prices. It does not include the size of each trade and does not include bid/ask quotations. For each security, the Exchange is proposing to add the following data elements to the service:

- High price
- Low price
- Cumulative volume

The Exchange anticipates that it will update these data elements every second, though initially it will update them once per minute. A security's high (low) price will reflect the highest (lowest) price at which the security has traded on the Exchange during the trading session through the point in time at which it is disseminated. Further, the cumulative volume will reflect a security's aggregate volume during a trading session through the point in time at which it is last disseminated. The Exchange believes that adding these data elements will make the product more attractive to the customers of NYSE Arca-Only Vendors.

b. Usage-Based Fee

The NYSE Arca Realtime Reference Price service features a flat, fixed monthly vendor fee of $30,000 and no user-based fees. For that fee, the NYSE Arca-Only Vendor may provide unlimited NYSE Arca Realtime Reference Prices to an unlimited number of the NYSE Arca-Only Vendor's subscribers and customers without having to differentiate between professional subscribers and nonprofessional subscribers, without having to account for the extent of access to the data, and without having to report the number of users.

The Exchange proposes to establish as an alternative to the fixed monthly fee a fee of $.004 for each real-time reference price that a NYSE Arca-Only Vendor disseminates to its customers. The Exchange proposes to limit a NYSE Arca-Only Vendor's exposure under this alternative fee by setting $30,000, the same amount as the fixed monthly rate, as the maximum fee that an NYSE Arca-Only Vendor would have to pay for real-time reference prices that it disseminates in any calendar month pursuant to the per-query fee.

In order to take advantage of the per-query fee, a NYSE Arca-Only Vendor must document in its Exhibit A that it has the ability to measure accurately the number of queries and must have the ability to report aggregate query quantities on a monthly basis.

The Exchange will impose the per-query fee only on the dissemination of real-time reference prices. NYSE Arca-Only Vendors may provide delayed data services in the same manner as they do today.

The per-query charge is imposed on NYSE Arca-Only Vendors, not end-users, and is payable on a monthly basis. Because it represents a new and additional alternative to the monthly fixed fee, NYSE Arca-Only Vendors may elect to disseminate NYSE Arca Realtime Reference Prices pursuant to the per-query fee rather than the fixed monthly fee.

c. Justification of Fee

The NYSE Arca Realtime Reference Prices service enables internet service providers and traditional vendors that have large numbers of casual investors as subscribers and customers to contribute to the Exchange's operating costs in a manner that is appropriate for their means of distribution. Adding a per-query payment option will reduce the costs of the service to some of those internet service providers and traditional vendors. For the reasons explained above, the Exchange believes that this will enable NYSE Arca Realtime Reference Prices vendors to make a more appropriate contribution to the Exchange's operating costs.

In establishing the per-query fee, the Exchange took into consideration several factors, including:

(1) The fees that Nasdaq and NYSE are charging for similar services and that NYSE Amex has proposed to charge;

(2) Consultation with some of the entities that currently receive the service or that the Exchange anticipates may commence to take advantage of the service;

(3) The contribution of market data revenues that the Exchange believes is appropriate for entities that are most likely to take advantage of the proposed service;

(4) The contribution that revenues accruing from the proposed fees will make to meet the overall costs of the Exchange's operations;

(5) The savings in administrative and reporting costs that the NYSE Arca Realtime Reference Prices service will provide to NYSE Arca-Only Vendors; and

(6) The fact that the proposed fee would provide an attractive alternative to existing fees under the CTA Plan and to NYSE Arca's monthly flat fee, an alternative that vendors will purchase only if they determine that the perceived benefits outweigh the cost.

The Exchange believes that the level of the per-query fee is consistent with the approach set forth in the order by which the Commission approved ArcaBook fees for NYSE Arca.[6] In the ArcaBook Approval Order, the Commission stated that ''when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory.''[7] It noted that if significant competitive forces apply to a proposal, the Commission will approve it unless a substantial countervailing basis exists.

NYSE Arca Realtime Reference Prices constitute ''non-core data.'' The Exchange does not require a central processor to consolidate and distribute the product to the public pursuant to joint-SRO plans. Rather, the Exchange distributes the product voluntarily.

In the case of NYSE Arca Realtime Reference Prices, both of the two types of competitive forces that the Commission described in the ArcaBook Approval Order are present: The Exchange has a compelling need to attract order flow and the product competes with a number of alternative products.

The Exchange must compete vigorously for order flow to maintain its share of trading volume. This requires the Exchange to act reasonably in setting market data fees for non-core products such as NYSE Arca Realtime Reference Prices. The Exchange hopes that NYSE Arca Realtime Reference Prices will enable vendors to distribute NYSE Arca last sale price data widely among investors, and thereby provide a means for promoting the Exchange's visibility in the marketplace.

In addition to the need to attract order flow, the availability of alternatives to NYSE Arca Realtime Reference Prices significantly constrain the prices at which the Exchange can market NYSE Arca Realtime Reference Prices. All national securities exchanges, the several Trade Reporting Facilities of FINRA, and ECNs that produce

[5] The Exchange notes that it makes the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

[6] *See* Release [sic] No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (the ''ArcaBook Approval Order'').

[7] *Id.* at 74771.

proprietary data, as well as the core data feed, are all sources of competition for NYSE Arca Realtime Reference Prices. Currently, NYSE and Nasdaq offer similar services. (In addition, the Exchange anticipates that NYSE Amex will soon file for approval of a counterpart product.)

The information available in NYSE Arca Realtime Reference is included in the CTA core data feed, which also includes the size of trades, as well as last sale information from other markets. Even though NYSE Arca Realtime Reference Prices omits size and provides prices that are not consolidated with those of other markets, investors may select it as a less expensive alternative to the CTA Plan's consolidated last sale price services for certain purposes. (Rule 603(c) of Regulation NMS requires vendors to make the core data feeds available to customers when trading and order-routing decisions can be implemented.)

d. Amendment to Exhibit C

In providing NYSE Arca Realtime Reference Prices, the Exchange supplements the standard Network A Vendor Form with an *Exhibit C* that provides certain terms and conditions that are unique to the NYSE Arca Realtime Reference Prices service, such as the replacement of end-user agreements with a hyperlink to a notice and a labeling requirement. One of those supplemental conditions provides that the NYSE Arca-Only Vendor will only distribute last sale prices as part of the service. Because this filing proposes to expand the permissible universe of data elements that a NYSE Arca-Only Vendor may disseminate, the Exchange proposes to amend the Exhibit C. The proposed revised version of *Exhibit C* is attached to the proposed rule change as *Exhibit 4* and *Exhibit 5. Exhibit 4* is marked to show the proposed changes to the current version of *Exhibit C. Exhibit 5* is a clean, unmarked version.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'') for the proposed rule change is the requirement under Section 6(b)(4) [8] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5) [9] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The proposed rule change would benefit investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Arca Realtime Reference Prices service. In addition, the Exchange believes that the proposed per-query fee would provide pricing flexibility to entities that determine to provide the NYSE Arca Realtime Reference Prices service.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE Arca Realtime Reference Prices proposes to provide an alternative fee (the per-query fee) to existing fees and does not alter or rescind any existing fees. In addition, it amounts to a competitive response to the products that Nasdaq and NYSE make available. For those reasons, the Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca-2009–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–108. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–108 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30078 Filed 12–17–09; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61151; File No. SR–NASDAQ–2009–109]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Rule 1160 To Reflect the Availability of the FINRA Contact System to Nasdaq Members That Are Not Also Members of FINRA

December 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq submits this proposed rule change to Rule 1160 to extend the availability of the FINRA Contact System to Nasdaq members that are not also members of FINRA.

The text of the proposed rule change is below. Proposed new language is underlined and proposed deletions are in brackets.

1160. Contact Information Requirements

(a) Each member shall report to Nasdaq all contact information required by Nasdaq via the *FINRA* [NASD] Contact System [(in the case of Nasdaq members that are FINRA members) or via electronic mail or paper mail (in the case of Nasdaq members that are not FINRA members)].

(b)–(c) No change.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to update Rule 1160 to reflect the availability of the FINRA Contact System (''System'') to Nasdaq members that are not also members of FINRA, and to make a technical change to the name of the System. The System maintains contact information records required by both Nasdaq and NASD Rules 1120, 1150, 3011, and 3520. Both Nasdaq and FINRA use this information for regulatory communications, and compliance purposes, among other things. The information is provided to FINRA as part of the membership application. If the applicant is approved for membership, the new member is provided access to the System and is responsible for entering the required information into the System as well as keeping it current thereafter. Historically, FINRA permitted access to the System only to members of FINRA. A Nasdaq member that was already a member of FINRA could access the System to fulfill its ongoing obligation to keep the required information current; however, Nasdaq members that were not also members of FINRA were not permitted access to the System. As a consequence, such firms could only fulfill their obligation to keep the required information current by submitting the information to Nasdaq via e-mail or paper mail.

FINRA recently made changes to the System so that Nasdaq-only members may also access the System, thus eliminating the need for the existing methods of providing such information. Nasdaq believes that having a central electronic location for this information is superior to the paper and e-mail-based methods of warehousing the information. Nasdaq will have access to the information maintained in the System for Nasdaq-only members in the same way as it has historically had with respect to Nasdaq members that are also members of FINRA. As such, Nasdaq is proposing to eliminate the language from Rule 1160 that requires Nasdaq-only members to provide required information by means other than the System. Nasdaq is also proposing to update the rule to reflect the new name of the System adopted by FINRA.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general and with Sections 6(b)(5) of the Act,[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these provisions in that it will make available to all Nasdaq members an efficient means by which they may provide information required by Nasdaq rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section

[5] *http://www.finra.org/Industry/Compliance/RegulatoryFilings/FCS/P005662.*

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

Normally, a proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay. In its filing, Nasdaq noted that the proposal would provide a means for firms to comply with regulatory requirements more easily and quickly, and that keeping such information in a centralized, electronic location would enhance Nasdaq's and FINRA's oversight of these members.

The Commission believes that waiver of the 30-day operative period is consistent with the protection of investors and the public interest. The proposed rule change would allow contact information, utilized for regulatory communications and compliance purposes, among other things, to be more efficiently collected in a centralized location. In addition, the modification of the rule to reflect the new name of the System will add clarity to Nasdaq's rules. Accordingly, the Commission designates the proposal to be effective upon filing with the Commission.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2009–109 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–NASDAQ–2009–109. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–109 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading & Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that Nasdaq has satisfied the five-day pre-filing notice requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61140; File No. SR–CBOE–2009–048]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Regarding Authority Over C2 Options Exchange, Incorporated

December 10, 2009.

I. Introduction

On July 2, 2009, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') 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 relating to CBOE's authority over C2 Options Exchange, Incorporated (''C2''), a wholly-owned subsidiary of CBOE that has filed with the Commission to register as a self-regulatory organization (''SRO'') under Section 6 of the Exchange Act.[3] The proposed rule change was published for comment in the **Federal Register** on July 22, 2009.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

On January 21, 2009, CBOE filed an application with the Commission seeking registration of a second national securities exchange, referred to as C2.[5] In connection with that application, CBOE proposed to adopt a policy to codify the fact that CBOE, upon any Commission approval of the Form 1 application seeking to establish C2 as a registered options exchange, will be responsible for ensuring that C2 fulfills its self-regulatory obligations and will have the resources necessary for it to do so.[6] The proposed policy sets forth

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities and Exchange Act Release No. 59441 (February 24, 2009), 74 FR 9322 (March 3, 2009) (File No. 10–191) (''C2 Notice'').

[4] *See* Securities Exchange Act Release No. 60307 (July 15, 2009), 74 FR 36289 (''Notice'').

[5] *See* C2 Notice, *supra* note 3.

[6] The first paragraph of proposed Rule 2.50 reads, in relevant part:

C2 Options Exchange, Incorporated (''C2'') will be and remain a self-regulatory organization registered under Section 6 of the Exchange Act and as such will have statutory authority and responsibility concerning, among other things, the operation of its market and regulation of its members. As the parent company with 100% controlling interest in C2, the Exchange will be responsible for ensuring that C2 meets its obligations as a self-regulatory organization.

certain principles that will guide CBOE in fulfilling its responsibilities as the parent company of C2 should the Commission grant C2's application for registration.[7]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal addresses the role of CBOE in the operation of C2 and sets forth certain important governing principles relating to this responsibility.[10] The proposed policy reflects CBOE's commitment and responsibility to ensure that C2 meets its obligations as an SRO. Specifically, CBOE's proposed policy represents that it will bear ultimate responsibility for ensuring that C2 meets its statutory obligations. Further, CBOE will ensure that C2 has and appropriately allocates the necessary resources so that C2 can meet those obligations. The Commission believes it is consistent with the Act for CBOE, as parent company and controlling owner of C2, to make these commitments. Further, the Commission notes that the proposed policy is similar to a policy that was formerly adopted by the National Association of Securities Dealers, Inc. in connection with its combination with the American Stock Exchange, Inc.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2009–048) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

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[7] The proposed principles set forth in proposed Rule 2.50 are as follows:

1. The Exchange will exercise its powers and its managerial influence to ensure that C2 fulfills its self-regulatory obligations by:

Directing C2 to take action necessary to effectuate its purposes and functions as a national securities exchange operating pursuant to the Exchange Act; and ensuring that C2 has and appropriately allocates such financial, technological, technical, and personnel resources as may be necessary or appropriate to meet its obligations under the Exchange Act.

2. The Exchange will refrain from taking any action with respect to C2 that, to the best of its knowledge, would impede, delay, obstruct, or conflict with efforts by C2 to carry out its self-regulatory obligations under the Exchange Act and the rules and regulations thereunder.

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* note 7, *supra* (setting forth the proposed principles).

[11] *See* Securities and Exchange Act Release No. 40622 (October 30, 1998), 63 FR 59819 at 59827 (November 5, 1998) (SR–Amex–98–32; SR–NASD–98–56; SR–NASD–98–67).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61138; File No. SR–NYSEArca–2009–112]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Add Commentary .01 to Rule 6.47

December 10, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 7, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Rule 6.47 to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the Trading Crowd (''tied hedge'' orders) based on a recently approved rule change of the Chicago Board Options Exchange (''CBOE'').[4] The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add Commentary .01 to Rule 6.47 to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the Trading Crowd (''tied hedge'' orders), based on a recently approved rule change of the CBOE. Rule 6.47 generally sets forth the procedures by which a floor broker may cross an order with a contra-side order. Currently, transactions executed pursuant to Rule 6.47 are subject to the restrictions of paragraph (b) of Rule 6.49, Solicited Transactions, which prohibits trading based on knowledge of imminent undisclosed solicited transactions (commonly referred to as ''anticipatory hedging'').

Existing Anticipatory Hedge Rule

By way of background, when Rule 6.49 was adopted in 2001, the Exchange noted its belief that it is appropriate to permit solicitation between potential buyers and sellers of options in advance of the time they send actual orders to the trading crowd on the Exchange. The Exchange also noted that, if the orders that comprise a solicited transaction are not suitably exposed to the order

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 60499 (August 13, 2009), 74 FR 42350 (August 21, 2009) (order approving SR–CBOE–2009–007).

interaction process on the Trading Floor, the execution of such orders would not be consistent with Exchange rules designed to promote order interaction in an open-outcry auction.[5] Solicited transactions by definition entail negotiation, and if the orders that comprise a solicited transaction are not adequately exposed to the floor auction, the in-crowd market participants (*e.g.,* Market-Makers in the trading crowd) cannot have sufficient time to digest and react to those orders' terms. The pre-negotiation inherent in the solicitation process thus can enable the parties to a solicited transaction to preempt the crowd to an execution at the pre-negotiated price. Thus, the Exchange notes, Rule 6.49 was originally designed to preserve the right to solicit orders in advance of submitting a proposed trade to the crowd, while at the same time assuring that orders that are the subject of a solicitation are exposed to the auction market in a meaningful way. In addition to requiring disclosure of orders and clarifying the priority principles applicable to solicited transactions,[6] Rule 6.49 provides that it is inconsistent with just and equitable principles of trade for any OTP Holder, OTP Firm, or associated person, who has knowledge of all the material terms of an originating order[7] and a solicited order (including a facilitation order) that matches the original order's price, to enter an order to buy or sell an option of the same class as any option that is the subject of the solicitation prior to the time that the original order's terms are disclosed to the crowd or the execution of the solicited transaction can no longer reasonably be considered imminent. This prohibition extends to orders to buy or sell the underlying security or any ''related instrument,'' as that term is defined in the rule.[8]

When originally adopted in 2001, the Exchange believed that the prohibition on anticipatory hedging was necessary to prevent OTP Holders and OTP Firms and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely related instrument in advance of persons represented in the relevant options crowd. NYSE Arca believes the basic principle remains true today, but changes in the marketplace have caused the Exchange to re-evaluate the effectiveness and efficiency of the existing rule's procedural requirements. The Exchange believes that increased volatility in the markets, as well as the advent of penny trading in underlying stocks and resultant decreased liquidity at the top of each underlying market's displayed national best bid or offer, it has become increasingly difficult for OTP Holders and OTP Firms to assess the ultimate execution prices and the extent of available stock to hedge related options facilitation/solicitation activities, and to manage that market risk. This risk extends to simple and complex orders, and to all market participants involved in the transaction (whether upstairs or on-floor) because of the uncertainty of the extent to which the market participant will participate in the transaction, the amount of time associated with the auction process, and the likelihood that the underlying stock prices in today's environment may be difficult to assess and change before they are able to hedge. These circumstances make it difficult to obtain a hedge, difficult to quote orders and difficult to achieve executions, and can translate into less liquidity in the form of smaller size and wider quote spreads, fewer opportunities for price improvement, and the inefficient handling of orders. Additionally, more and more trading activity appears to be taking place away from the exchange-listed environment and in the over-the-counter (''OTC'') market, which by its nature is not subject to the same trade-through type risks present in the exchange environment. Therefore, the Exchange is seeking to make its trading rules more efficient not only to address the market risk and execution concerns, but also to effectively compete with and attract volume from the OTC market. What is more, Market-Makers' trading strategies have evolved. Where as [sic] before Market-Makers tended to trade based on delta risk,[9] now market-making strategy is based more on volatility.[10] The tied hedge transaction procedures (described below) are designed in a way that is consistent with this shift toward a volatility trading strategy, and makes it more desirable for Market-Makers to compete for orders that are exposed through the solicitation process.

Proposed Exception to Anticipatory Hedge Rule

In order to address the concerns associated with increased volatility and decreased liquidity and more effectively compete with the OTC market, the Exchange is proposing to adopt a limited exception to the anticipatory hedging restrictions that would permit the representation of hedging stock positions in conjunction with option orders, including complex orders, in the options trading crowd (a ''tied hedge'' transaction). The Exchange believes this limited exception remains in keeping with the original design of Rule 6.49, but sets forth a more practicable approach considering today's trading environment that will provide the ability to hedge in a way that will still encourage meaningful competition among upstairs and floor brokers. Besides stock positions, the proposal would also permit security futures positions to be used as a hedge. In addition, in the case where the order is for options on indices, options on exchange-traded funds (''ETF'') or a related instrument may be used as a

[5] For example, Rule 6.73, Manner of Bidding and Offering, requires bids and offers to be made at the post by public outcry, and Rule 6.47 imposes order exposure requirements on floor brokers seeking to cross buy orders with sell orders.

[6] For example, the rule requires that the OTP Holder or OTP Firm representing an original order that is the subject of a solicitation to disclose the terms of the original order to the crowd before the original order can be executed. This disclosure is intended to eliminate the unfairness that can be associated with pre-negotiated transactions among the parties to the solicitation versus the in-crowd market participants, and would subject the order that is the subject of the solicitation to full auction interaction with other orders in the crowd. In addition, priority is accorded depending on whether the original order is disclosed throughout the solicitation period; whether the solicited order improves the best bid or offer in the trading crowd; and whether the solicited order matches the original order's limit. Rule 6.47(b) contains exceptions to these priority provisions in instances where a crossing participation entitlement is sought.

[7] An ''originating order'' is an order respecting an option traded on the Exchange, including a spread, combination, straddle, stock option, security-future-option or any other complex order. *See* Rule 6.9.

[8] For purposes of Rule 6.49(b), an order to buy or sell a ''related instrument,'' means, ''in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index.''

[9] The price of an option is not completely dependent on supply and demand, nor on the price of the underlying security. Market-Makers price options are based on basic measures of risk as well. One of these such measures, delta, is the rate of change in the price of an option as it relates to changes in the price of the underlying security, security future or futures contract. The delta of an option is measured incrementally based on movement in the price of the underlying security, security future or futures contract. For example, if the price of an option increases or decreases by $1.00 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 100. If the price of an option increases or decreases by $0.50 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 50.

[10] Volatility is a measure of the fluctuation in the underlying security's market price. Market-Makers that trade based on volatility have options positions that they hedge with the underlying. Once hedged, the risk exposure to the Market-Maker is realized volatility and implied volatility. Realized volatility is the actual volatility in the underlying. Implied volatility is determined by using option prices currently existing in the market at the time rather than using historical data on the market price changes of the underlying.

hedge. A ''related instrument'' would mean, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. A ''related instrument'' would mean, in reference to an ETF, a futures contract on any economically equivalent index applicable to the ETF underlying the option order.[11]

With a tied hedge transaction, Exchange OTP Holders and OTP Firms would be permitted to first hedge an option order with the underlying security, a security future or futures contract, as applicable, and then forward the option order and the hedging position to an Exchange floor broker with instructions to represent the option order together with the hedging position to the options trading crowd. The in-crowd market participants that chose to participate in the option transaction must also participate in the hedging position. First, under the proposal, the original option order must be in a class designated as eligible for a tied hedge transaction as determined by the Exchange, including FLEX Options classes.[12] The original option order must also be within designated tied hedge eligibility parameters, which would be determined by the Exchange and would not be smaller than 500 contracts.[13] The Exchange notes that the minimum order size would apply to an individual originating order.[14] Multiple originating orders could not be aggregated to satisfy the requirement (though multiple contra-side solicited orders could be aggregated to execute against the originating order). The Exchange states that the primary purpose of this provision is to limit use of the tied hedge procedures to larger orders that might benefit from an OTP Holder or OTP Firms' ability to execute a facilitating hedge. Assuming an option order meets these eligibility parameters, the proposal also includes a number of other conditions that must be satisfied.

Second, the proposal would require that, prior to entering tied hedge orders on behalf of customers, the OTP Holder or OTP Firm must deliver to the customer a one-time written notification informing the customer that their order may be executed using the Exchange's tied hedge procedures. Under the proposal, the written notification must disclose the terms and conditions contained in the proposed rule and be in a form approved by the Exchange. Given the minimum size requirement of 500 contracts per order, the Exchange believes that use of the tied hedges procedures will generally consist of orders for the accounts of institutional or sophisticated, high net worth investors. The Exchange therefore believes that a one-time notification delivered by the OTP Holder or OTP Firm to the customer would be sufficient, and that an order-by-order notification would be unnecessary and overly burdensome.

Third, an OTP Holder or OTP Firm would be required to create an electronic record that it is engaging in a tied hedge order in a form and manner prescribed by the Exchange. The Exchange states that the purpose of this provision is to create a record to ensure that hedging trades would be appropriately associated with the related options order and appropriately evaluated in the Exchange's surveillance program. The Exchange believes that this requirement should enable the Exchange to monitor for compliance with the requirements of the proposed rule, as discussed below, by identifying the specific purchase or sell orders relating to the hedging position.

Fourth, the proposed rule would require that OTP Holders and OTP Firms that have decided to engage in tied hedge orders for representation in the trading crowd would have to ensure that the hedging position associated with the tied hedge order is comprised of a position that is designated as eligible for a tied hedge transaction. Eligible hedging positions would be determined by the Exchange for each eligible class and may include (i) the same underlying stock applicable to the options order, (ii) a security future overlying the same stock applicable to the option order, or (iii) in reference to an option on an index or an ETF, a ''related instrument'' (as described above). For example, for options overlying XYZ stock, the Exchange may determine to designate the underlying XYZ stock or XYZ security futures or both as eligible hedging positions.[15]

The Exchange states that the purpose of this provision is to ensure that the hedging position would be for the same stock, equivalent security future or related instrument, as applicable, thus allowing crowd participants who may be considering participation in a tied hedge order to adequately evaluate the risk associated with the option as it relates to the hedge. With stock positions in particular, the Exchange notes that occasionally crowd participants hedge option positions with stock that is related to the option, such as the stock of an issuer in the same industry, but not the actual stock associated with the option. Except as otherwise discussed above for index options, the proposed rule change would not allow such a ''related'' hedging stock position, but would require the hedging stock position to be the actual security underlying the option.

Fifth, the proposal would require that the entire hedging position be brought without undue delay to the trading crowd. In considering whether the hedging position is presented without ''undue delay,'' the Exchange believes that OTP Holders and OTP Firms should continue to have the same ability to shop an order in advance of presenting it to the crowd and should be able to enhance that process through obtaining a hedge. The Exchange also believes that, once a hedge is obtained, the order should be brought to the crowd promptly in order to satisfy the ''undue delay'' requirement. In addition, the proposal would require that the hedging position be announced to the Trading Crowd concurrently with the options order, offered to the crowd in its entirety, and offered at the execution price received by the OTP Holder or OTP Firm introducing the order to any in-crowd market participant who has established parity or priority for the related options. In-crowd market participants that participate in the option transaction must also participate in the hedging position on a proportionate basis[16] and would not be

[11] For example, a tied hedge order involving options on the iShares Russell 2000 Index ETF might involve a hedge position in the underlying ETF, security futures overlying the ETF, or futures contracts overlying the Russell 2000 Index.

[12] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[13] The designated classes and minimum order size applicable to each class would be communicated to OTP Holders via Regulatory Circular. For example, the Exchange could determine to make the tied hedge transaction procedures available in options class XYZ for orders of 1,000 contracts or more. Such a determination would be announced via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available.

[14] In determining whether an individual original order satisfies the eligible order size requirement, the proposed Rule text states that any Complex Order must contain one leg alone which is for the eligible order size or greater.

[15] As with designated classes and minimum order size, the eligible hedging positions applicable to each class would be communicated to the OTP Holder via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available. *See* note 13, *supra.*

[16] For example, if an in-crowd market participant's allocation is 100 contracts out of a 500 contract option order (1/5), the same in-crowed market participant would trade 10,000 shares of a

Continued

permitted to prevent the option transaction from occurring by giving a competing bid or offer for one component of the tied hedge order. The Exchange states that the purpose of these requirements is to ensure that the hedging position represented to the crowd would be a good faith effort to provide in-crowd market participants with the same opportunity as the OTP Holder or OTP Firm introducing the tied hedge order to compete most effectively for the option order.

For example, if an OTP Holder introducing a tied stock hedge order were to offer 1,000 XYZ option contracts to the crowd (overlying 100,000 shares of XYZ stock) and concurrently offer only 30,000 of 100,000 shares of the underlying stock that the OTP Holder obtained as a hedge, crowd participants might only be willing or able to participate in 300 of the option contracts offered if the hedging stock position cannot be obtained at a price as favorable as the stock hedging position offering price, if at all. The Exchange states that the effect of this would be to place the crowd at a disadvantage relative to the introducing OTP Holder for the remaining 700 option contracts in the tied stock hedge order, and thus create a disincentive for the crowd to bid or offer competitively for the remaining 700 option contracts. The Exchange believes the requirement that the hedging position be presented concurrently with the option order in the crowd and offered to the crowd in its entirety at the execution price received by the OTP Holder or OTP Firm introducing the order should ensure that the crowd would be competing on a level playing field with the introducing OTP Holder or OTP Firm to provide the best price to the customer.

Sixth, the proposal would require that the hedging position not exceed the options order on a delta basis. For example, in the situation where a tied stock hedge order involves the simultaneous purchase of 50,000 shares of XYZ stock and the sale of 500 XYZ call contract (known as a ''buy-write''), and the delta of the option is 100, it would be considered ''hedged'' by 50,000 shares of stock. Accordingly, the proposed rule would not allow the introducing OTP Holder or OTP Firm to purchase more than 50,000 shares of stock in the hedging stock position. The Exchange believes that it is reasonable to require that the hedging position be in amounts that do not exceed the equivalent size of the related options order on a delta basis, and not for a greater number of shares. The Exchange believes that the proposed rule change would support its view that the OTP Holder or OTP Firm introducing the tied hedge order be guided by the notion that any excess hedging activity could be detrimental to the eventual execution price of the option order. Consequently, while delta estimates may vary slightly, the introducing OTP Holder or OTP Firm would be required to assume hedging positions not to exceed the equivalent size of the options order on a delta basis.[17]

The Exchange believes that the delta basis requirement, together with the additional conditions that an introducing OTP Holder or OTP Firm bring the hedging position without undue delay to the trading crowd and announce it concurrently with the option order, offer it to the crowd in its entirety, and offer it at the execution price received by the OTP Holder or OTP Firm or to any in-crowd market participant who has established parity or priority, will help assure that the hedging activity is bona fide and not for speculative or manipulative purposes. Additionally, the Exchange believes these conditions will help assure that there is no adverse effect on the auction market because, as discussed above, in-crowd market participants will have the same opportunity as the OTP Holder or OTP Firm introducing the tied hedge order to compete for the option order and will share the same benefits of limiting the market risk associated with hedging. The Exchange believes that customers will also benefit if the market risks are limited in the manner proposed. Once an original order is hedged, there is no delta risk. With the delta risk minimized, quotes will likely narrow as market participants (whether upstairs or on-floor) are better able to hedge and compete for orders. For example, Market-Makers could more easily quote markets to trade against a customer's original order based on volatility with the delta risk minimized, which would ultimately present more price improvement opportunities to the original order.[18]

At this time, the Exchange is not proposing any special priority provisions applicable to tied hedge transactions, though it intends to evaluate whether such changes are desired and may submit a separate rule filing on this subject in the future. Under the instant proposal, all tied hedge transactions will be treated as Complex Orders (regardless of whether the original order was a simple or complex order). Priority will be afforded in accordance with the Exchange's existing open outcry allocation and reporting procedures for Complex Orders.[19] Any resulting tied hedge transactions will also be subject to the existing NBBO trade-through requirements for options and stock, as applicable. In this regard, the Exchange believes that the resulting option and stock components of the tied hedge transactions may qualify for various NBBO trade through exceptions including, for example, the complex

50,000 stock hedge position tied to that option order (1/5).

[17] The Exchange notes that there may be scenarios where the introducing OTP Holder or OTP Firm purchases (sells) less than the delta, *e.g.,* when there is not enough stock available to buy (sell) at the desired price. In such scenarios, the introducing OTP Holder or OTP Firm would present the stock that was purchased (sold) and share it with the in-crowd market participants on equal terms. This risk of obtaining less than a delta hedge is a risk that exists under the current rules because of the uncertainty that exists when market participants price an option and have to anticipate the price at which they will be able to obtain a hedge. The proposed tied hedge procedures are designed to help reduce this risk, but the initiating OTP Holder or OTP Firm may still be unable to execute enough stock at the desired price. To the extent the initiating OTP Holder or OTP Firm is able to execute any portion of the hedge, the risk exposure to the initiating OTP Holder or OTP Firm and the in-crowd market participants would be diminished because those shares would be ''tied up'' and available for everyone that participates on the resulting tied hedge transaction. The Exchange does not believe that the initiating OTP Holder or OTP Firm would have an unfair advantage by having the ability to pre-facilitate less than a delta hedge because the proposed procedures would require the in-crowd market participants to get a proportional share of the hedge. To the extent more stock is needed to complete a hedge, the initiating OTP Holder OTP Firm and the in crowd market participants would have the same risk exposure that they do today.

[18] The Exchange also believes that the proposed exception to the anticipatory hedging procedures will assist in the Exchange's competitive efforts to attract order flow from the OTC market, which may result in increased volume on the exchange markets.

[19] Generally, a Complex Order may be expressed in any increment and executed at a net debit or credit price with another OTP Holder or OTP Firm without giving priority to equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the Consolidated Book provided at least one leg of the order betters the corresponding bid (offer) in the Consolidated Book. For stock-option orders and security future-option orders, this means that the options leg of the order has priority over bids (offers) of the trading crowd but not over bids (offers) in the Consolidated Book. In addition, for complex orders with non-option leg(s), such as stock-option orders, a bid or offer is made and accepted subject to certain other conditions, including that the options leg(s) may be cancelled at the request of any OTP Holder or OTP Firm that is a party to the transaction if market conditions in any other market(s) prevent the execution of the non-options leg(s) at the agreed price(s). *See, e.g.,* NYSE Arca Rules 6.72, Trading Differentials, 6.75, Priority and Order Allocation Procedures—Open Outcry, 6.77, Contract Made on Acceptance of Bid or Offer, and 6.47. Any crossing participation entitlement would also apply to the tied hedge procedures in accordance with Rule 6.47(b).

trade exception to the Options Order Protection And Locked/Crossed Market Plan [20] (''Order Protection Plan'') (except in the scenario where the originating order is a simple order) and the qualified contingent trade exception to Rule 611(a) of Regulation NMS for the stock component.[21]

The Exchange recognizes that, at the time a tied hedge transaction is executed in a Trading Crowd, market conditions in any of the non-options market(s) may prevent the execution of the non-options leg(s) at the price(s) agreed upon. For example, the execution price may be outside the non-options market's best bid or offer (''BBO''), *e.g.,* the stock leg is to be executed at a price of $25.03 and the particular stock market's BBO is $24.93—$25.02, and such an execution would normally not be permitted unless an exception applies that permits the trade to be reported outside the BBO. The Exchange notes that the possibility of this scenario occurring exists with complex order executions today and tied hedge transactions would present nothing unique or novel in this regard. In the event the conditions in the non-options market continue to prevent the execution of the non-option leg(s) at the agreed price(s), the trade representing the options leg(s) of the tied hedge transaction may ultimately be cancelled in accordance with NYSE Arca's existing rules.[22]

The following examples illustrate these priority principles:

- *Simple Original Order:* Introducing member receives an original customer order to buy 500 XYZ call options, which has a delta of 100. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing member, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at $25.03 per share to the NYSE Arca trading crowd.
- *Complex Original Order:* Introducing member receives an original customer stock-option order to buy 500 XYZ call options and sell 50,000 shares of XYZ stock. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing OTP Holder or OTP Firm, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at $25.03 per share to the trading crowd.

In either the simple or complex order scenario, the next steps are the same and are no different from the procedures currently used to execute a Complex Order on NYSE Arca in open outcry.

- The in-crowd market participants would have an opportunity to provide competing quotes for the tied hedge package (and not for the individual component legs of the package). For example, assume the best net price is $24.53 (equal to $0.50 for each option contract and $25.03 for each corresponding share of hedging stock).
- The option order and hedging stock would be allocated among the in-crowd market participants that established priority or parity at that price, including the initiating OTP Holder or OTP Firm, in accordance with the standard allocation procedures, with the options leg being executed and reported on NYSE Arca and the stock leg being executed and reported on the stock market specified by the initiating OTP Holder or OTP Firm.

For example, the introducing member might trade 40% pursuant to an open outcry crossing entitlement (200 options contracts and 20,000 shares of stock) and the remaining balance might be with three different Market-Makers that each participated on 20% of the order (100 options contracts and 10,000 shares of stock per Market-Maker).

- *The resultant tied hedge transaction:* (i) Would qualify as a ''complex trade'' under the Order Protection Plan and the execution of the 500 option contracts with the market participants would not be subject to the NBBO for the particular option series in the scenario where the originating order is a complex order (not a simple order); and (ii) would qualify as a ''qualified contingent trade'' under Regulation NMS and the execution of the 30,000 shares of stock (the original 50,000 shares less the initiating member's 20,000 portion) with the market participants would not be subject to the NBBO for the underlying XYZ stock.
- The execution of the options leg would have to satisfy the Exchange's intra-market priority rules for Complex Orders (including that the execution price may not be outside the NYSE Arca BBO). Thus, if the Exchange's BBO for the series was $0.40–$0.55, the execution could take place at or inside that price range (*e.g.,* at the quoted price of $0.50) and could not take place outside that price range (*e.g.,* not at $0.56).
- Similarly, the execution of the stock at $25.03 per share would have to satisfy the intra-market priority rules of the market(s) where the stock is to be executed (including that the execution price may not be outside that market's BBO) or, alternatively, qualify for an exception that permits the trade to be reported outside the executing market(s)' BBO.
- If market conditions in the executing market(s) prevent the execution of the stock leg(s) at the price(s) agreed upon from occurring (*e.g.,* the BBO remains at $24.93–$25.02), then the options leg(s) could be cancelled at the request of any member that is a party to that trade.

While the particular circumstances surrounding each transaction on the Exchange's trading floor are different, the Exchange does not believe, as a general proposition, that the tied hedge procedures would be inherently harmful or detrimental to customers or have an adverse affect on the auction market. Rather, the Exchange believes the

[20] A ''complex trade'' is defined as: (i) The execution of an order in an option series in conjunction with the execution of one or more related orders in different option series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0) and for the purpose of executing a particular investment strategy; or (ii) the execution of a stock option order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than 8 option contracts per unit of trading of the underlying stock or convertible security established for that series by the Options Clearing Corporation. *See* paragraph (4) of NYSE Arca Rule 6.92, Definitions (applicable to the Order Protection Plan), and subparagraph (b)(7) to NYSE Arca Rule 6.94, Order Protection.

[21] A ''qualified contingent trade'' is defined as a transaction consisting of two or more component orders, executed as agent or principal, where: (i) At least one component order is in an NMS stock; (ii) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component is contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined at the time the contingent order is placed; (v) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (vi) any trade throughs caused by the execution of an order involving one or more NMS stocks (each an ''Exempted NMS Stock Transaction'') is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade. *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008).

[22] The Exchange notes that, in the event of a cancellation, OTP Holders and OTP Firms may be exposed to the risk associated with holding the hedge position. The Exchange intends to address this point in a circular to OTP Holders and OTP Firms.

procedures will improve the opportunities for an order to be exposed to a competitive auction and represent an improvement over the current rules. The fact that the parties to such a trade end up fully hedged may contribute to the best execution of the orders and, in any event, participants continue to be governed by, among other things, their best execution responsibilities. The Exchange also believes that the proposed tied hedge procedures are fully consistent with the original design of Rule 6.49 which, as discussed above, was designed to eliminate the unfairness that can be associated with a solicited transaction and to encourage meaningful competition. The tied hedge procedures will keep in-crowd market participants on equal footing with solicited parties in a manner that minimizes all parties' market risk while continuing to assure that orders are exposed in a meaningful way.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act [23] in general, and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, as it will improve the opportunities for an order to be exposed to a competitive auction and represent an improvement over the current rules and will keep in-crowd market participants on equal footing with solicited parties in a manner that minimizes all parties' market risk while continuing to assure that orders are exposed in a meaningful way.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[23] 15 U.S.C. 78f (b).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [26] and Rule 19b–4(f)(6)(iii) thereunder.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–112 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–NYSEArca–2009–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2009–112 and should be submitted on or before January 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–30063 Filed 12–17–09; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[28] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0042]

Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration/Department of Homeland Security (DHS)—Match #1010

AGENCY: Social Security Administration.

ACTION: Notice of a renewal of an existing computer matching program which will expire on January 31, 2010.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program we currently conduct with DHS.

DATES: We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefaxing to (410) 965–0201 or writing to the Deputy Commissioner for Budget, Finance and Management, 800 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Deputy Commissioner for Budget, Finance and Management as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act (CMPPA) 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 persons 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 persons.

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 other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards 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 a person's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: December 1, 2009.

Michael G. Gallagher,

Deputy Commissioner for Budget, Finance and Management.

NOTICE OF COMPUTER MATCHING PROGRAM, SSA WITH DHS

A. PARTICIPATING AGENCIES:

SSA and DHS.

B. PURPOSE OF THE MATCHING PROGRAM:

The purpose of this matching program is to establish conditions, safeguards, and procedures for disclosure of information relating to aliens for matching purposes by DHS and us. DHS will disclose two separate data files through a computer matching operation for our use in making Federal benefit eligibility determinations for ''Aliens Who Leave the United States Voluntarily'' and ''Aliens Who are Removed from the United States.''

C. AUTHORITY FOR CONDUCTING THE MATCHING PROGRAM:

Legal authority for this matching operation is the Social Security Act (Act), 42 U.S.C. 402(n), 1382(f) and 1382c(a)(1), and the Immigration and Nationality Act (INA), 8 U.S.C. 1611 and 1612. Section 1631(e)(1)(B) of the Act, requires us to verify declarations of applicants for and recipients of Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to provide us with information necessary to verify SSI eligibility or benefit amounts or to verify other information related to these determinations.

In addition, section 202(n)(2) of the Act, specifies that the ''Attorney General or the Secretary of Homeland Security notify the Commissioner of Social Security'' when certain individuals are removed under specified provisions of section 237(a) or under section 212(a)(6)(A) of the INA.

It is executed under the Privacy Act of 1974, 5 U.S.C. 552a, as amended by the CMPPA of 1988, and the regulations and guidance promulgated thereunder.

D. Categories of Records and Individuals Covered by Matching Program:

1. Aliens Who Leave the United States Voluntarily:

The DHS identifies for us, aliens who leave the United States voluntarily by their Benefits Information System (BIS), DHS/USCIS–007. Our systems of records used in this portion of the matching program are the Master Files of Social Security Number (SSN) Holders and SSN Applications, also known as the NUMIDENT, SSA/OEEAS 60–0058 and the Supplemental Security Income Record and Special Veterans Benefits (SSIR/SVB), also known as the SSR, SSA/OASSIS 60–0103.

BIS furnishes the alien's name, SSN, date of birth (DOB), alien identification number, (''A'' number), date of departure, and expected length of stay. To verify the SSN, BIS data will be matched against the names, DOB, and SSNs of our Numident and Alpha Index files. Verified SSNs will be stored and matched against the same elements in SSA's SSR files.

2. Aliens Who Are Removed From the United States:

DHS identifies for us, aliens who are removed from the United States from their Removable Alien Records System (RARS) (DHS/ICE–011). Immigration and Customs Enforcement now maintains information on removed aliens in the Enforcement Integrated Database (EID). Our systems of records used in this portion of the matching program are the NUMIDENT, SSA/OEEAS 60–0058, the Master Beneficiary Record (MBR), SSA/OEEAS 60–0090, and the SSR, SSA/OASSIS 60–0103. The Unverified Prisoner System (UPS) is now used to do a manual search of fallout cases where the Enumeration and Verification System is unable to locate an SSN for an alien deportee. New alien screens and software were created for those deported from the United States and made part of the UPS process. No changes were made to the function of the system.

RARS, EID furnishes the names and aliases (if any) of those removed, SSN (if available), DOB, sex, country of birth, country to which removed, date of removal, the final removal charge code and DHS ''A'' number. To verify the SSN, RARS data will be matched against SSA's Numident and Alpha-Index files (SSA/OEEAS 60–0058). Verified SSNs are matched against the existing MBR and SSR records to locate those removed (and their dependents or survivors, if any) who have already

claimed and are currently receiving RSDI and/or SSI benefits.

E. Inclusive Dates of the Matching Program:

The matching program will become effective no sooner than 40 days after notice of thematching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register,** whichever date is later. 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.

[FR Doc. E9–29870 Filed 12–17–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

American Recovery and Reinvestment Act Public Transportation on Indian Reservations Program Project Selections and Tribal Transit Program Fiscal Year (FY) 2009 Project Selections

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of award.

SUMMARY: The Federal Transit Administration (FTA) announces the selection of projects to be funded under the American Recovery and Reinvestment Act (ARRA) for the Public Transportation on Indian Reservations Program (Tribal Transit Program (TTP)), and Fiscal Year (FY) 2009 appropriations for the Tribal Transit Program, a program authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Section 3013(c).

FOR FURTHER INFORMATION CONTACT: Contact the appropriate FTA regional Tribal Liaison (Appendix), for application-specific information and issues. For general program information, contact Lorna R. Wilson, Office of Transit Programs, at (202) 366–2053, e-mail: *Lorna.Wilson@dot.gov.* A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION: The Tribal Transit Program (TTP) established by Section 3013 SAFETEA–LU, Public Law 109–49 (August 15, 2005), under 49 U.S.C. 5311(c) makes funds available to federally recognized Indian tribes or Alaska Native villages, groups, or communities as identified by the Bureau of Indian Affairs (BIA) in the U.S. Department of the Interior for public transportation capital projects, operating costs and planning activities that are eligible costs under the Nonurbanized Area Formula Program (Section 5311). The ARRA TTP funding may be used only for capital expenditures.

Awards: A total of $17 million was made available for the TTP program under ARRA. A total of 71 applicants requested $54 million for capital projects. FTA made project selections through a competitive process based on each applicant's responsiveness to the program evaluation criteria outlined in FTA's March 23, 2009 **Federal Register** Notice. A total of 39 of the highest rated projects have been selected for funding. The 39 successful applicants are listed in Table 1 of this Notice.

A total of $15 million was made available for FY 2009 Tribal Transit program. A total of 81 applicants requested $28 million for new transit services, enhancement or expansion of existing transit services, and planning studies including operational planning. FTA made project selections through a competitive process based on each applicant's responsiveness to the program evaluation criteria outlined in FTA's April 29, 2009, **Federal Register** Notice. FTA also took into consideration the current status of previously funded TTP grantees. Because of the high demand, many applicants selected for funding will receive less funding than they requested, which enables FTA to support an increased number of meritorious applications. A total of 63 applications have been selected for funding. The projects provide $15 million to 61 tribes, for transit planning studies and/or operational planning ($250,000); startup projects for new transit service ($1.5 million); and for enhancements or expansion of existing transit services ($13.25 million).

Special Requirments Under ARRA Tribal Transit Program: ARRA funding must be obligated in a grant by June 30, 2010. FTA reserves the right to redistribute funds not obligated by the June 30, 2010 date to other successful applicants that have obligated their ARRA TTP funds. Any tribe receiving ARRA funds must also abide by the special reporting requirements under ARRA which includes:

Section 1511: Certifications.
Section 1512: Reports on Use of Funds.
Section 1512(h): Registration.
Section 1201(c)(2): Periodic Reports.

Each of the 102 awardees, as well as the applicants not selected for funding, will receive a letter explaining the funding decision. Following publication of this Notice, an FTA regional tribal liaison will contact each applicant selected for funding to discuss each tribe's specific technical assistance needs. FTA will also host a special ARRA reporting webinar shortly after the publication of this Notice. In the event the contact information provided by your tribe in the application has changed, please contact your tribal liaison with the current information in order to expedite the grant award process.

Issued in Washington, DC, this 15th day of December 2009.

Peter M. Rogoff,

Administrator.

Appendix—FTA Regional Offices and Tribal Transit Liaisons

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine—Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Phone: (617) 494–2055, Fax: (617) 494–2865, Regional Tribal Liaison(s): Laurie Ansaldi and Judi Molloy.

Region II—New York, New Jersey—Brigid Hynes-Cherin, FTA Regional Administrator, One Bowling Green, Room 429, New York, NY 10004–1415, Phone: (212) 668–2170, Fax: (212) 668–2136, Regional Tribal Liaison: Darin Allan.

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC, Letitia Thompson, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Phone: (215) 656–7100, Fax: (215) 656–7260. (NO TRIBES)

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico, Virgin Islands—Yvette G. Taylor, FTA Regional Administrator, 230 Peachtree St., NW., Suite 800, Atlanta, GA 30303, Tel.: 404–865–5600, Fax: 404–865–5600, Regional Tribal Liaisons: Jamie Pfister and Tajsha LaShore.

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan—Marisol R. Simon, FTA Regional Administrator, 200 West Adams Street, Suite 320, Chicago, IL 60606–5232, Phone: (312) 353–2789, Fax: (312) 886–0351, Regional Tribal Liaisons: Joyce Taylor and Angelica Salgado.

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma—Robert Patrick, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Phone: (817) 978–0550, Fax: (817) 978–0575, Regional Tribal Liaison: Lynn Hayes.

Region VII—Iowa, Nebraska, Kansas, Missouri—Mokhtee Ahmad, FTA Regional Administrator, 901 Locust Street, Suite 404, Kansas City, MO 64106, Phone: (816) 329–3920, Fax: (816) 329–3921, Regional Tribal Liaisons: Joni Roeseler and Cathy Monroe.

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah—Terry Rosapep, FTA Regional Administrator, 12300 West Dakota Avenue, Suite 310, Lakewood, CO 80228–2583, Phone: (720) 963–3300, Fax: (720) 963–3333, Regional Tribal Liaisons: Jennifer Stewart and David Beckhouse.

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam—Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 1650, San Francisco, CA 94105–1926, Phone: (415) 744–3133, Fax: (415) 744–2726, Regional Tribal Liaison: Eric Eidlin.

Region X—Washington, Oregon, Idaho, Alaska—Richard Krochalis, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Phone: (206) 220–7954, Fax: (206) 220–7959, Regional Tribal Liaison: Bill Ramos.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on NC 119 Relocation—Mebane, Alamance County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitations on claims for Judicial Review of Actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(1)(1). The actions relate to a proposed highway project, the NC 119 Relocation from I–85/40 to south of SR 1918 (Mrs. White Lane)—Mebane, Alamance County, North Carolina. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139 (1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before June 16, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Clarence W. Coleman, P. E., Preconstruction and Environmental Director, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina, 27601–1418; Telephone: (919) 747–7014; e-mail: *clarence.coleman@dot.gov.* FHWA North Carolina Division Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time). You may also contact Gregory J. Thorpe, PhD, Project Development and Environmental Analysis Branch Manager, North Carolina Department of Transportation (NCDOT), 1 South Wilmington Street (Delivery), 1548 Mail Service Center, Raleigh, North Carolina 27699–1548; Telephone (919) 733–3141, *gthorpe@dot.state.nc.us.* NCDOT—Project Development and Environmental Analysis Branch Office's normal business hours are 8 a.m. to 5 p.m. (Eastern Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency action subject to 23 U.S.C. 139 (l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of North Carolina: NC 119 Relocation, Federal-aid Project No. STP–119(1), Alamance County, North Carolina. This project identified a need to address capacity constraints and connectivity deficiencies along the existing NC 119 in Mebane, North Carolina. The proposed action will improve 5.6 miles of NC 119 from I–85/40 to south of SR 1918 (Mrs. White Lane). Beginning at I–85/40, the selected alternative (Alternative 9) constructs a six-lane, median divided facility before transitioning to a four-lane, median divided typical section in the vicinity of Fieldstone Drive. The project includes a grade separation over the North Carolina Railroad and US 70, which lies adjacent to the railroad. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on June 11, 2009, in the FHWA Record of Decision (ROD) issued on December 8, 2009, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA or NCDOT at the addresses provided above. The FHWA FEIS and ROD can be viewed at the NCDOT—Project Development and Environmental Analysis Branch, 1 South Wilmington Street, Raleigh, North Carolina; NCDOT—Division 7 Alamance County Resident Engineer Office, 115 East Crescent Square Drive, Graham, North Carolina; Mebane Public Library, 101 South 1st Street, North Carolina; City of Mebane Planning & Zoning Department, 106 East Washington Street, Mebane, North Carolina; Alamance-Burlington School System, 1712 Vaughn Road, Burlington, North Carolina; and Alamance County Planning Department, 217 College Street, Suite C, Graham, North Carolina.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 USC 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 USC 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with

Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139 (1)(1)

Issued on: December 10, 2009.

Clarence W. Coleman,

Preconstruction and Environmental Director, Raleigh, North Carolina.

[FR Doc. E9–30118 Filed 12–17–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35250 (Sub-No. 1)]

LRY, LLC D.B.A. Lake Railway—Lease and Operation Exemption—Rail Line in Lake County, OR

LRY, LLC D.B.A. Lake Railway (LRY), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Lake County, OR (Lake County), and to operate 54.45 miles of railroad on the Lakeview Branch, extending from milepost 458.60 at Alturas, CA, to milepost 513.05, at Lakeview, OR.[1] That line had been previously leased to Modoc Railway and Land Company, LLC (MR&L), and operated by Modoc Northern Railroad Co (MNNR). According to LRY, Lake County has terminated that lease and filed an adverse discontinuance application with the Board, which was granted.[2]

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35250, *LRY, LLC D.B.A. Lake Railway—Lease and Operation Exemption—Union Pacific Railway Company,* wherein LRY seeks to lease and operate 62.21 miles of UP's lines of railroad, consisting of: (1) Part of the Modoc Subdivision, extending from milepost 445.6 near MacArthur, CA, to milepost 506.1 near Perez, CA; and (2) part of the Lakeview Branch, extending from milepost 456.89 to milepost 458.60 at Alturas, CA.

The transaction cannot be consummated until January 1, 2010, the effective date of the exemption (30 days after the exemption is filed).[3]

LRY certifies that, as a result of this transaction, its projected revenues will not exceed those that would quality it as a Class III carrier.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by no later than December 24, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35250 (Sub-No. 1) must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on James H. M. Savage, Of Counsel, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: December 15, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–30102 Filed 12–17–09; 8:45 am]

BILLING CODE 4915–01–P

[1] The notice had stated that the line extended from milepost 458.60 at Alturas, CA, to milepost 512.30, at Lakeview, OR, for a total distance of 53.70 miles. On December 14, 2009, LRY filed a pleading amending its notice to reflect the correct milepost and distance.

[2] *See Lake County, Oregon—Adverse Discontinuance of Rail Service—Modoc Railway and Land Company, LLC and Modoc Northern Railroad Company,* STB Docket No. AB–1035 (STB served Nov. 17, 2009).

[3] LRY states in its notice that it plans to commence operations on or after December 31, 2010.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35250]

LRY, LLC D.B.A. Lake Railway—Lease and Operation Exemption—Union Pacific Railroad Company

LRY, LLC D.B.A. Lake Railway (LRY), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Union Pacific Railroad Company (UP), and to operate 62.21 miles of UP's lines of railroad, consisting of: (1) Part of the Modoc Subdivision, extending from milepost 445.6 near MacArthur, CA, to milepost 506.1 near Perez, CA; and (2) part of the Lakeview Branch, extending from milepost 456.89 to milepost 458.60 at Alturas, CA (the lines).

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 35250 (Sub-No. 1), *LRY, LLC D.B.A. Lake Railway—Lease and Operation Exemption—Rail Line in Lake County, OR,* wherein LRY seeks to lease and operate 54.45 miles of railroad on the Lakeview Branch, owned by Lake County, OR, extending from milepost 458.6 at Alturas, to milepost 513.05, at Lakeview, OR. The lines involved herein, and the line involved in the (Sub-No. 1) proceeding had been previously leased to Modoc Railway and Land Company, LLC (MR&L), and operated by Modoc Northern Railroad Co. (MNRR). UP has terminated the lease with MR&L and MNRR and plans to file for adverse discontinuance authority for MNRR from the Board.

The transaction cannot be consummated until January 1, 2010, the effective date of the exemption (30 days after the exemption is filed).[1]

LRY certifies that, as a result of this transaction, its projected revenues will not exceed those that would qualify it as a Class III carrier.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

[1] LRY states in its notice that it plans to commence operations on or after December 31, 2009.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed by no later than December 24, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35250 must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy must be served on James H. M. Savage, Of Counsel, John D. Heffner, PLLC, 1750 K Street, NW., Suite 200, Washington, DC 20006.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: December 15, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–30109 Filed 12–17–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program Update and Request for Review for Modesto City-County Airport, Modesto, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program update that was submitted for Modesto City-County Airport under the provisions of 49 U.S.C. 47501 *et seq.* (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR part 150 by City of Modesto. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Modesto City-County Airport were in compliance with applicable requirements, effective January 9, 2009 (74 FR 4499). The proposed noise compatibility program update will be approved or disapproved on or before June 6, 2010.

DATES: *Effective Date:* The effective date of the start of FAA's review of the noise compatibility program update is December 9, 2009. The public comment period ends February 8, 2010.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, Federal Aviation Administration, Western-Pacific Region, San Francisco Airports District Office, 831 Mitten Road, Suite 210, Burlingame, California 94010. Telephone number: (650) 876–2778, extension 613. Comments on the proposed noise compatibility program update should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program update for Modesto City-County Airport which will be approved or disapproved on or before June 6, 2010. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program update for Modesto City-County Airport, effective on December 6, 2009. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to FAR Part 150 requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 6, 2010.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program update are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, Planning and Environmental Division, APP–400, 800 Independence Avenue, SW., Room 621, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region Office, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, CA 90261.

Federal Aviation Administration, Western-Pacific Region, San Francisco Airports District Office, 831 Mitten Road, Suite 210, Burlingame, CA 94010.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on December 9, 2009.

Mia Paredes Ratcliff,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. E9–30186 Filed 12–17–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Railserve, Inc.

(Waiver Petition Docket Number FRA–2009–0115)

The Railserve, Inc. (RASX) of Atlanta, Georgia, has petitioned for a permanent waiver of compliance for two (2) locomotives from the requirements of the Railroad Safety Glazing Standards, Title 49 CFR Part 223, which require certified glazing in all windows. The reporting marks on these locomotives

are RASX 2120 and RASX 1286. These locomotives are used in switching operations inside the Kinder Morgan chemical plant in Houston, Texas. The switching operations involve interchange with the Union Pacific Railroad for inbounds and outbounds only, on the trackage that is less than ¼ mile long. RASX states that there is no history of vandalism at the Kinder Morgan chemical plant in Houston, Texas, and that both locomotives are parked inside the plant at all times. The top speed of operations is 5 mph. RASX has stated that to install glass at FRA specifications would be cost prohibitive. Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0115) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on December 11, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–30200 Filed 12–17–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The National Railroad Passenger Corporation

(Docket Number FRA–2009–0103)

By letter dated September 28, 2009, the National Railroad Passenger Corporation (Amtrak), a Class 1 Railroad, petitioned FRA for a waiver of compliance from 49 CFR part 214 (Railroad Workplace Safety) related to the removal of snow from passenger station platforms outside of the Northeast Corridor. Notice of this waiver request was published on October 30, 2009. 74 FR 56257. Amtrak subsequently withdrew its September 28, 2009, waiver request and by letter dated November 13, 2009, Amtrak submitted a modified request for waiver from 49 CFR part 214, again related to the removal of snow from passenger station platforms outside of the Northeast Corridor.

Section 214.335 of Part 214 specifies the methods by which roadway work groups may be provided on-track safety when fouling tracks to perform work. Fouling a track means ''the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail.'' Amtrak states that the current definition of fouling a track prevents the timely removal of snow from the last three feet of station platforms adjacent to the track and it discourages the removal of snow in an area where snow removal is critical for passenger safety. Accordingly, Amtrak seeks permission to implement alternative protection for workers removing snow.

In accordance with Amtrak's waiver request, only Amtrak employees and contractors trained on the alternative protection methods will be used to remove snow from platforms and when relying on the proposed alternative protection procedure, only small tools such as shovels, brooms and leaf blowers would be used. If large, powered equipment is to be used, Amtrak would comply with 49 CFR part 214.

The alternative protection procedure would also include:

1. Job briefings to discuss work to be done.
2. Prohibition on workers' feet crossing the yellow tactile strip.
3. Prohibition on conducting snow removal in the presence of moving trains.

Amtrak also submits they are not aware of any safety incidents associated with the recommended procedures at the many stations maintained by public agencies such as municipalities that use non railroad employees to clear platforms.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0103) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is

taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on December 11, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–30202 Filed 12–17–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

(Docket Number FRA–2009–0109)

The Union Pacific Railroad (UP) would like to respectfully request a waiver to the portion of 49 CFR 236.303 requiring portable derails to be connected to the signal system. Due to the current economic downturn, UP has found it necessary to use main, siding, and auxiliary tracks to facilitate the storing of cars. Cars and equipment are being stored in accordance with 49 CFR 232.103. The railroad also feels that the placing of portable derails on these tracks will increase the security of these cars that are being stored for an undetermined length of time.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2009–0109) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on December 11, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–30199 Filed 12–17–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35325]

CSX Transportation, Inc.—Trackage Rights Exemption—Illinois Central Railroad Company

Pursuant to a written trackage rights agreement, Illinois Central Railroad Company (IC) has agreed to grant limited overhead trackage rights to CSX Transportation, Inc. (CSXT),[1] over IC's line of railroad between: (1) The Decatur Street road crossing, at or near milepost 77.7, and milepost 76.7, on IC's Peoria Subdivision, including IC's connection with CSXT, a distance of approximately 1 mile; (2) milepost 30.5 and milepost 28.6 on IC's Peoria Subdivision (Green Switch Spur), a distance of approximately 1.9 miles; and (3) IC's lead track from its connection to the Green Switch Spur to IC's connection with the Archer Daniel Midland Company's Run-Around-Yard (ADM facilities) on IC's Peoria Subdivision, a distance of approximately 0.7 miles. The entire length of the lines is 3.6 miles, all in Decatur, IL. The trackage rights also include the use of: All sidings, yard tracks, and yard leads now existent or hereafter constructed along the tracks; and the right-of-way for the tracks to be used, signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to the use of the tracks.

The transaction is schedule to be consummated on or shortly after January 3, 2010, the effective date of the exemption (30 days after the exemption is filed).

The purpose of the trackage rights is to allow CSXT to provide more efficient service to the ADM facilities, via trackage rights rather than reciprocal switching.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to

[1] A redacted version of the trackage rights agreement between IC and CSXT was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. The motion is being addressed in a separate decision.

revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by December 28, 2009 (at least 7 days before the exemption becomes effective).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35325, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, and Steven C. Armbrust, Esq., CSX Transportation, Inc., 500 Water Street J–150, Jacksonville, FL 32202.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: December 14, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–30082 Filed 12–17–09; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Friday,
December 18, 2009

Book 2 of 2 Books
Pages 67309–67800

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2009; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9056–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2009

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

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from July 2009 through September 2009, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations (NCDs) affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption (IDE) numbers approved by the Food and Drug Administration (FDA) that potentially may be covered under Medicare. This notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations and a list of Medicare-approved carotid stent facilities. Included in this notice is a list of the American College of Cardiology's National Cardiovascular Data registry sites, active CMS coverage-related guidance documents, and special one-time notices regarding national coverage provisions. Also included in this notice is a list of National Oncologic Positron Emissions Tomography Registry sites, a list of Medicare-approved ventricular assist device (destination therapy) facilities, a list of Medicare-approved lung volume reduction surgery facilities, a list of Medicare-approved clinical trials for fluorodeoxyglucose positron emissions tomogrogphy for dementia, and a list of Medicare-approved bariatric surgery facilities.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning CMS manual instructions in Addendum III may be addressed to Ismael Torres, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–1864.

Questions concerning regulation documents published in the **Federal Register** in Addendum IV may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

Questions concerning Medicare NCDs in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning FDA-approved Category B IDE numbers listed in Addendum VI may be addressed to John Manlove, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–13–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6877.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Melissa Musotto, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6962.

Questions concerning Medicare-approved carotid stent facilities in Addendum VIII may be addressed to Sarah J. McClain, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2994.

Questions concerning Medicare's recognition of the American College of Cardiology-National Cardiovascular Data Registry sites in Addendum IX may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare's active coverage-related guidance documents in Addendum X may be addressed to Beverly Lofton, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7136.

Questions concerning one-time notices regarding national coverage provisions in Addendum XI may be addressed to Beverly Lofton, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7136.

Questions concerning National Oncologic Positron Emission Tomography Registry sites in Addendum XII may be addressed to Stuart Caplan, RN, MAS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–8564.

Questions concerning Medicare-approved ventricular assist device (destination therapy) facilities in Addendum XIII may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved lung volume reduction surgery facilities listed in Addendum XIV may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved bariatric surgery facilities listed in Addendum XV may be addressed to Kate Tillman, RN, MA, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–9252.

Questions concerning fluorodeoxyglucose positron emission

tomography for dementia trials listed in Addendum XVI may be addressed to Stuart Caplan, RN, MAS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–8564.

Questions concerning all other information may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, NCDs, and FDA-approved IDEs published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare NCD Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003 publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into 11 addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—
  - Date published;
  - **Federal Register** citation;
  - Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  - Agency file code number; and
  - Title of the regulation.
- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the IDE number.
- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.
- Addendum VIII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients.
- Addendum IX includes a list of the American College of Cardiology's National Cardiovascular Data registry sites. We cover implantable cardioverter defibrillators (ICDs) for certain indications, as long as information about the procedures is reported to a central registry.
- Addendum X includes a list of active CMS guidance documents. As required by section 731 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003), we will begin listing the current versions of our guidance documents in each quarterly listings notice.
- Addendum XI includes a list of special one-time notices regarding national coverage provisions. We are publishing a list of issues that require public notification, such as a particular clinical trial or research study that qualifies for Medicare coverage.
- Addendum XII includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.
- Addendum XIII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices used as destination therapy. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.
- Addendum XIV includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial are also eligible to receive coverage.
- Addendum XV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities

must meet our standards in order to receive coverage for bariatric surgery procedures.

• Addendum XVI includes a listing of Medicare-approved clinical trials for fluorodeoxyglucose positron emission tomography (FDG–PET) for dementia and neurodegenerative diseases.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp.*

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access.* The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html,* by using local WAIS client software, or by telnet to *swais.gpoaccess.gov,* then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://cms.hhs.gov/rulings.*

D. CMS' Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

• Titles XI, XVIII, and XIX of the Act.
• CMS-related regulations.
• CMS manuals and monthly revisions.
• CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 2005. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.*) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

For each CMS publication listed in Addendum III, CMS publication and transmittal numbers are shown. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare Benefit Policy publication titled ''Sleep Testing for Obstructive Sleep Apnea (OSA),'' use CMS–Pub. 100–03, Transmittal No. 103.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: December 2, 2009.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

BILLING CODE 4120–01–P

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

September 28, 2007 (72 FR 55282)

December 28, 2007 (72 FR 73990)

April 1, 2008 (73 FR 17422)

June 27, 2008 (73 FR 36596)

September 26, 2008 (73 FR 55902)

December 30, 2008 (73 FR 79982)

March 27, 2009 (74 FR 13516)

June 26, 2009 (74 FR 30689)

September 25, 2009 (74 FR 49076)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the former CIM (now the NCDM) was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III
Medicare and Medicaid Manual Instructions
July Through September 2009

Transmittal No.	Manual/Subject/Publication Number

Medicare General Information
(CMS-Pub. 100-01)

Medicare Benefit Policy
(CMS-Pub. 100-02)

108 New Reporting Requirements for the Quarterly Opt Out Report in Contractor Reporting of Operational Workload Data

109 Diabetes Self-Management Training Certified Diabetic Educator Certified Providers

110 Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority and Examples of Application of Government Entity Exclusion

111 Comprehensive Outpatient Rehabilitation Facility Services
Comprehensive Outpatient Rehabilitation Facility Services Provided by Medicare
Required Services
Optional CORF Services
Rules for Provision of Services
Rules for Payment of CORF Services
Physician Services
Physical Therapy Services
Occupational Therapy Services
Speech-Language Pathology Services
Respiratory Therapy Services
Prosthetic and Orthotic Devices and Supplies
Social and/or Psychological Services
Nursing Services
Drugs and Biologicals
Home Environment Evaluation
Vaccines

Medicare National Coverage Determination
(CMS-Pub. 100-03)

102	Wrong Surgical or Other Invasive Procedure Performed on a Patient; Surgical or Other Invasive Procedure Performed on the Wrong Body Part; Surgical or Other Invasive Procedure Performed on the Wrong Patient
	Wrong Surgical or Other Procedure Performed on Patient (Effective January 15, 2009)
	Surgical or Other Invasive Procedure Performed on the Wrong Body Part (Effective January 15, 2009)
103	Sleep Testing for Obstructive Sleep Apnea (OSA)
	Sleep Testing for Obstructive Sleep Apnea (OSA) (Effective March 3, 2009)
104	FDG PET for Solid Tumors and Myeloma and Additional Manual Updates
	Positron Emission Tomography (PET) Scans (Effective April 6, 2009)
	PET for Perfusion of the Heart (Various Effective)
	FDG PET for Lung Cancer
	FDG PET for Esophageal Cancer
	FDG PET for Colorectal Cancer
	FDG PET for Lymphoma
	FDG PET for Melanoma
	FDG PET for Head and Neck Cancers
	FDG PET for Refractory Seizures (Effective July 1, 2001)
	FDG PET for Breast Cancer
	FDG PET for Thyroid Cancer
	FDG PET for Soft Tissue Sarcoma
	FDG PET for Dementia and Neurodegenerative Diseases
	FDG PET for Brain, Cervical, Ovarian, Pancreatic, Small Cell Lung, and Testicular Cancers
	FDG PET for All Other Cancer Indications Not Previously Specified
	Positron Emission Tomography for Oncologic Conditions
105	Screening Computed Tomography Colonography (CTC) for Colorectal Cancer
	Colorectal Cancer Screening Tests
106	FDG PET for Solid Tumors and Myeloma
	Positron Emission Tomography Scans
	PET for Perfusion of the Heart (Various Effective Dates)
	FDG PET for Refractory Seizures (Effective July 1, 2001)
	FDG PET for Dementia and Neurodegenerative Diseases (Effective September 15, 2004)

Positron Emission Tomography for Oncologic Conditions

Medicare Claims Processing
(CMS-Pub. 100-04)

1762 Appeals Revisions
CMS Decisions Subject to the Administrative Appeals Process
Who May Appeal
Steps in the Appeals Process: Overview
Appointment of Representative
How to Make and Revoke an Appointment
Letter Format
Multiple Beneficiaries
Filing a Request for Redetermination
Time Limit for Filing a Request for Redetermination
The Redetemination
Dismissals
Dismissal Letters
Model Dismissal Notices
Medicare Redetermination Notice (for partly or fully unfavorable redetermination)
Medicare Redetermination Notice (for full favorable redeterminations)
Effect of the Redetermination
Filing a Request for a Request
Contractor Responsibilities – General
Tracking Cases
Effectuation Time Limits & Responsibilities

1763 ESRD: Placement of a List of Diagnostic Tests that are Considered End-Stage Renal Disease
Billing for ESRD Related Laboratory Tests
Automated Multi-Channel Chemistry Tests for ESRD Beneficiaries – FIs
Skilled Nursing Facility Consolidated Billing Editing and Separately Billed ESRD Laboratory Test Furnished to Patients of Renal Dialysis Facilities
Negotiated Rulemaking Implementations
List of Diagnostic Tests that are Considered End-Stage Renal Disease (ESRD)

1764 Wrong Surgical or Other Invasive Procedure Performed on a Patient; Surgical or Other Invasive Procedure Performed on the Wrong Body Part; Surgical or Other Invasive Procedure Performed on the Wrong Patient
Billing Wrong Surgical or Other Invasive Procedures Performed on a Patient, Surgical or Other Invasive Procedures Performed on the Wrong Body Part, and Surgical or Other Invasive Procedures Performed on the

	Wrong Patient
1765	2009 Durable Medical Equipment Prosthetics, Orthotics, and Supply Healthcare Common Procedure Coding System (HCPCS) Code Jurisdiction List
1766	Changes to the Laboratory National Coverage Determination (NCD) Edit Software for October 2009
1767	IOM Chapter 25 Revenue Code 076X Description Change Form Locator 42
1768	Update to Pub 100-04, Chapter 24, Section 40.7 of the Claims Processing Manual Electronic Funds Transfer (EFT)
1769	ESRD: Placement of a List of Diagnostic Tests that are Considered End-Stage Renal Disease (ESRD) Billing for ESRD Related Laboratory Tests Automated Multi-Channel Chemistry (AMCC) Tests for ESRD Beneficiaries – FIs Skilled Nursing Facility (SNF) Consolidated Billing (CB) Editing and Separately Billed ESRD Laboratory Test Furnished to Patients of Renal Dialysis Facilities
1770	Medicare Contractor Annual Update of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM)
1771	Interest Payment on Clean Non-PIP Claims Not Paid Timely Interest Payment on Clean Non-PIP Claims Not Paid Timely
1772	FDG PET for Solid Tumors and Myeloma and Additional Manual Updates Positron Emission Tomography Scans - General Information Billing Requirements for CMS-Approved Clinical Trial and Coverage With Evidence Development Claims for PET Scans for PET Scans for Neurodegenerative Diseases, Previously Specified Cancer Indications, and All Other Cancer Indications Not Previously Specified Billing and Coverage Changes for PET Scans Effective for Services on or After April 6, 2009
1773	Revised Processing of Osteoporosis Drugs Under the Home Health Benefit
1774	The Supplemental Security Income (SSI) Medicare Beneficiary Data for Fiscal Year 2007 for Inpatient Prospective Payment System (IPPS) Hospitals , Inpatient Rehabilitation Facilities (IRFs), and Long-Term Care Hospitals (LTCHs)
1775	Point of Origin Codes Update to the UB-04 (CMS-1450) Manual Code List Form Locators 1-15
1776	Telehealth Services in Indian Health Service or Tribal Providers Overview of Medicare Part B Services FI - Medicare Part B Services Paid Under Various Fee Schedules

	FI - Inpatient Ancillary Services - Medicare Part B – Claims Processing
	Outpatient - Medicare Part B - Claims Processing
	CAH Ancillary Services - Medicare Part B - Claims Processing
	CAH Outpatient - Medicare Part B - Claims Processing
	Payment for Telehealth Services to Indian Health Service/Tribal Facilities and Practitioners
	FI - Telehealth Originating Site Facility Fee - Medicare Part B - Payment
	FI - Telehealth Originating Site Facility Fee - Medicare Part B – Claims Processing
	FI - Payment for Distant Site Practitioner Services
1780	Update-Inpatient Psychiatric Facilities Prospective Payment System Rate Year
1781	Payment for Co-Surgeons in a Method II Critical Access Hospital
	Coding Co-Surgeon Services Rendered in a Method II CAH
	Use of Payment Policy Indicators for Determining Procedures Eligible for Payment of Co-Surgeons
	Payment of Co-Surgeon Services Rendered in a Method II CAH
	Co-Surgeon Medicare Summary Notice and Remittance Advice Messages
	Review of Supporting Documentation for Co-Surgeon Services in a Method II CAH
1782	Section 148 of The Medicare Improvements for Patients and Providers Act (MIPPA)
	Clinical Diagnostic Laboratory Tests Furnished by CAHs
	Hospital and Skilled Nursing Facility (SNF) Patients
	General Explanation of Payment
	Method of Payment for Clinical Laboratory Tests - Place of Service Variation
	Hospital Billing Under Part B
	Critical Access Hospital (CAH) Outpatient Laboratory Service
1784	The Use of the CR Modifier and DR Condition Code on Disaster/Emergency-Related Claims
	Emergency Preparedness Fee-For-Service Guidance
	Foreword
	Use of the CR Modifier and DR Condition Code on Disaster/Emergency-Related Claims
1785	Quarterly Update to Correct Coding Initiative Edits, Version 15.3, Effective October 1, 2009
1786	Appropriate Use of Modifier 50 and Add-On Codes for Facet Joint Injections Services
1787	Fractional Mileage Amounts Submitted on Ambulance Claims
	Coding Instructions for Paper and Electronic Claim Forms
	Items 14-33 - Provider of Service or Supplier Information
1788	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
1789	2010 Annual Update for the Health Professional Shortage Area (HPSA) Bonus

	Payments
1790	Clinical Laboratory Fee Schedule - Medicare Travel Allowance Fees for Collection of Specimens
1791	Issued to a specific audience, not posted to Internet/Intranet due to Confidential Instruction
1792	Instructions for Downloading the Medicare ZIP Code Files for January 2010
1793	Revision to the Selection Criteria for Recovery Audit Contractor (RAC) Adjustment Crossover Claims and for Fully Reimbursable Part B Claims Consolidated Claims Crossover Process Claims Crossover Disposition and Coordination of Benefits Agreement By-Pass Indicators Inclusion and Exclusion of Specified Categories of Adjustment Claims for Coordination of Benefits Agreement (COBA) Crossover Purposes
1794	Healthcare Provider Taxonomy Codes Update October 2009
1795	October 2009 Quarterly Average Sales Price Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing File
1796	Update to the Hospice Payment Rates, Hospice Cap, Hospice Wage Index, and the Hospice Pricer for FY 2010
1797	Claim Status Category Code and Claim Status Code Update
1798	Indian Health Service Hospital Payment Rates for Calendar Year 2009
1799	New Waived Tests
1800	Issued to a specific audience, not posted to internet/Intranet due to Sensitivity of Instruction
1801	October Update to the 2009 Medicare Physician Fee Schedule Database (MPFSDB)
1802	Expansion of the Number of Services Fields in Medicare SummaryNotices (MSNs)
1803	October 2009 Update of the Hospital Outpatient Prospective Payment System Background Policy and Billing Instructions for Condition Code 44
1804	Claim Adjustment Reason Code Remittance Advice Remark Code and Medicare Remit Easy Print Update
1805	Addition/Deletion of HCPCS Codes– October 2009 Quarterly Update
1806	October 2009 Update to the Ambulatory Surgical Center Payment System; Summary of Payment Policy Changes Place of Service Codes and Definitions
1807	Medicare Part A Skilled Nursing Facility Prospective Payment System Pricer Update FY 2010
1808	Inpatient Rehabilitation Facility Annual Update: Prospective Payment System Pricer Changes for FY 2010 Payment Provisions Under IRF PPS
1809	October 2009 Integrated Outpatient Code Editor (I/OCE) Specifications Version 10.3

1810	October Update to the 2009 Medicare Physician Fee Schedule Database
1811	Verification of Status for all Hospitals Qualifying for Disproportionate Share Hospital Payments under 42 CFR Section 412.106(c)(2), Also Known as the "Pickle Amendment"
	Additional Payment Amounts for Hospitals with Disproportionate Share of Low-Income Patients
1812	Claims Submitted for Items or Services Furnished to MedicareBeneficiaries in State or Local Custody Under a Penal Authority and Examples of Application of Government Entity Exclusion
	Claims Submitted for Items or Services Furnished to Medicare Beneficiaries in State or Local Custody Under a Penal Authority
1813	2010 Healthcare Common Procedure Coding System
	Annual Update Reminder
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1817	FDG PET for Solid Tumors and Myeloma
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	Billing Requirements for CMS - Approved Clinical Trial Claims for PET Scans for Neurodegenerative Diseases, Previously Specified Cancer Indications, and All Other Cancer Indications Not Previously Specified
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1818	Revised Processing of Osteoporosis Drugs Under the Home Health Benefit
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1819	Wrong Surgical or Other Invasive Procedure Performed on a Patient; Surgical or Other Invasive Procedure Performed on the Wrong Body Part; Surgical or Other Invasive Procedure Performed on the Wrong Patient
1820	Maintenance and Update of the Temporary Hook Created to Hold OPPS Claims that Include Certain Drug HCPCS Codes
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00	None

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51 Revisions to Appendix PP – "Interpretive Guidelines for Long-Term Care Facilities," Tag F441
52 Revisions to Appendix PP – "Interpretive Guidelines for Long-Term Care Facilities," Tag F441

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(CMS-Pub. 100-08)

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298 Issued to a specific audience, not posted to Internet/Intranet due to

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	Model Approval Letter for Initial Enrollment
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300	Compliance Standards for Consignment Closets and Stock and Bill Arrangements
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303	Local Coverage Determinations Exceptions
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Medicare End-Stage Renal Disease Network Organizations (CMS-Pub 100-14)

00 None

Medicare Managed Care (CMS-Pub. 100-16)

91 Chapter 3, "Medicare Marketing Guidelines"
Medicare Marketing Guidelines

Medicare Business Partners Systems Security (CMS-Pub. 100-17)

10 Business Partners Systems Security Manual
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Demonstrations
(CMS-Pub. 100-19)

00 None

One Time Notification
(CMS-Pub. 100-20)

511 Standard Paper Remittance (SPR) Update for Health Insurance Portability and Accountability Act (HIPAA) Version 005010
512 Implementation of the Health Insurance Portability and Accountability Act Version 005010 Common Edits and Enhancements Module – ICN

	Generator (for MCS ONLY)
513	Coding and Reporting Principles for the Physician Quality Reporting Initiative (PQRI) and the Electronic Prescribing (E-Prescribing) Incentive Programs
514	Implementation of the Health Insurance Portability and Accountability Act Version 005010 Common Edits and Enhancements Module –File preparation (for MCS ONLY)
515	Reminder for Roster Billing and Centralized Billing for Influenza and Pneumococcal Vaccinations
516	Implementation of the Health Insurance Portability and Accountability Act Version 005010 837 Institutional (837I) Edits
517	System Network Architecture Requirements for New CMS-Net Wide Area Network
518	Implementation of the Health Insurance Portability and Accountability Act Version 005010 837 Professional (837P) Edits
519	Implementation of the Health Care Claim Status Inquiry and Response (276/277) Version 005010 - Durable Medical Equipment (DME) Shared System Change
520	Annual Systematic Synchronization of Medicare Participating Physician or Supplier Agreement (PAR) Status Between the Multi Carrier System Provider Enrollment, Chain and Ownership System
521	Modifications to the National Coordination of Benefits Agreement (COBA) Crossover Process
522	Migrating the CMS Medicare Data Communication Network (MDCN) to the New Multi Protocol Label Switching (MPLS)
525	Phase 2 Base System Changes for Implementation of the Next Version of the Health Insurance Portability and Accountability Act (HIPAA) Multi Carrier System Only
526	Appropriate Use of Modifier 50 and Add-On Codes for Facet Joint Injections Services
527	Program Instructions Designating the Competitive Bidding Areas and Product Categories Included in the DMEPOS Competitive Bidding Program Round One Rebid in CY 2009
528	New Workload Number for and Transition of the Part A Louisiana and Mississippi Workloads to PBSI, an Existing Title XVIII Fiscal Intermediary
529	Issued to a specific audience, not posted to internet/Intranet due to Sensitivity of Instruction
530	Update Fiscal Intermediary Standard System to Deactivate Billing Numbers for Non-Frequent Billers
531	Additional Instructions on Processing Claims for Durable Medical Equipment, Prosthetics, Orthotics and Supplies Items Submitted Under the Guidelines

	Established in Change Request 5917
532	Deactivation Letter for the Multi-Carrier System
533	Phase 2 Base System Changes for Implementation of the Next Version of the Health Insurance Portability and Accountability Act - Viable Medicare System Only
534	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
535	Part B Organizational Supplier Enrollment Revalidation
536	Part B Individual Practitioner Supplier Enrollment Revalidation
537	5010-D.0 Project Receipt, Control and Balancing Initial Phase for A/B Medicare Administrative Contractor Only
538	PC Print Update for ASC X12 835 Version 005010
539	Medicare Part B Slide Preparation Facility Supplier enrollment Revalidation
540	5010-D.0 Project Receipt, Control and Balancing Initial Phase for Durable Medical Equipment Only
541	Implementation of the Health Insurance Portability and Accountability Act Version 005010 837 Institutional (837I) Edits for J10 and J14 Only
542	Skilled Nursing Facility Provider Enrollment Revalidation
543	Implementation of the Health Insurance Portability and Accountability Act Version 005010 837 Professional (837P) Edits Medicare Administrative Contractor - Jurisdictions 10 and 14 Only
544	Medicare Administrative Contractor Transition and Outbound Health Insurance Portability and Accountability Act Transactions
545	5010-D.0 Project Healthcare Claims Acknowledgement 277CA Generator (FISS and MCS ONLY)
546	Ambulatory Surgical Center Payment Indicator (ASCPI) File Error; and Reiteration of CMS Policy Regarding Beneficiary Liability for V2787 and V2788
547	Issued to specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
548	HIPAA 5010 Activity - Medicare Administrative Contractor Certification Test Package Development
549	Implementation of the Health Insurance Portability and Accountability Act Version 5010 - MAC Jurisdictions 10 and 14 Only
550	Implementation of Health Insurance Portability and Accountability Act of 1996 Version 5010 for Transaction 835 - Health Care Claim Payment/Advice and Updated Standard Paper Remit (SPR)
551	Creation of Receipt Date for Multi-Carrier System
552	Implementation of the Health Insurance Portability and Accountability Act Version 005010 Common Edits and Enhancements Module File Preparation

	(for FISS Only)
553	New Workload Number for and Transition of the Part A Louisiana and Mississippi Workloads to PBSI, an Existing Title XVIII Fiscal Intermediary
554	Implementation of the Health Insurance Portability and Accountability Act Version 005010 Common Edits and Enhancements Module –File preparation (for MCS ONLY)
555	Implementation of the Health Insurance Portability and Accountability Act Version 005010 Common Edits and Enhancements Module –File preparation
556	Part B Organizational Supplier Enrollment Revalidation
557	Part B Individual Practitioner Supplier Enrollment Revalidation
558	Skilled Nursing Facility Provider Enrollment Revalidation
559	Version 005010 Inbound 837 Institutional (837I) and Inbound 837 Professional (837P) Flat Files Implementation
560	HIPAA 5010 Activity - Medicare Administrative Contractor (MAC) Certification Test Package Development
561	Implementation of a File-Based RAC Mass Adjustment Process in MCS
562	Activation of New Coordination of Benefits Agreement Trading Partner Dispute Error Code Within the National Crossover Process
563	Allow Zoned Program Integrity Contractor (ZPIC) to Access Durable Medical Equipment Medicare Administrative Contractor (DME MAC) by ZPIC Zone

Addendum IV—Regulation Documents Published in the Federal Register July Through September 2009

Publication Date	FR Vol. 74 Page Number	42 CFR Parts Affected	File Code	Title of Regulation
July 6, 2009	31964	----------	CMS-1412-N	Medicare Program; Second Semi-Annual Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—August 5-7, 2009.
July 13, 2009	33403	410, 411, 414, 415, and 485	CMS-1413-CN	Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010; Correction.
July 13, 2009	33520	410, 411, 414, 415, and 485	CMS-1413-P	Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010.
July 15, 2009	34468	431, 447, and 457	CMS-6150-P	Medicaid and Children's Health Insurance Program (CHIP); Revisions to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs.
July 20, 2009	35232	410, 416, and 419	CMS-1414-P	Medicare Program; Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2010 Payment Rates; Proposed Changes to the Ambulatory Surgical Center Payment System and CY 2010 Payment Rates.

July 24, 2009	36720	----------	CMS-2305-PN	Medicare and Medicaid Programs; Application of the Accreditation Commission for Health Care for Deeming Authority for Hospices.
July 24, 2009	36722	----------	CMS-5050-N	Medicare and Medicaid Programs; Resolicitation of Proposals for the Private, For-Profit Demonstration Project for the Program of All-Inclusive Care for the Elderly (PACE) and Announcement of Closing Date.
July 24, 2009	36723	----------	CMS-1415-N	Medicare Program; Announcement of Five New Members to the Advisory Panel on Ambulatory Payment Classification Groups.
July 24, 2009	36724	----------	CMS-1564-N	Medicare Program; Request for Nominations and Meeting of the Practicing Physicians Advisory Council, August 31, 2009.
August 5, 2009	39032	410, 411, 414, 415, and 485	CMS-1413-CN2	Medicare Program; Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2010; Correction.
August 6, 2009	39329	----------	CMS-1495-CN	Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2009 (RY 2010); Correction.

August 6, 2009	39384	405 and 418	CMS-1420-F	Medicare Program; Hospice Wage Index for Fiscal Year 2010.
August 6, 2009	39436	409, 424, 484, and 489	CMS-1560-P	Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2010.
August 7, 2009	39762	412	CMS-1538-F	Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2010.
August 11, 2009	40288	483	CMS-1410-F	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2010; Minimum Data Set, Version 3.0 for Skilled Nursing Facilities and Medicaid Nursing Facilities.
August 26, 2009	43087	410, 411, 414, 415, 485, and 489	CMS-9061-N	Electronic Public Comment Transmission Error for Two Medicare Program Rules.
August 27, 2009	43754	412, 413, 415, 485, and 489	CMS-1406-FC	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and Fiscal Year 2010 Rates; and Changes to the Long-Term Care Hospital Prospective Payment System and Rate Years 2010 and 2009 Rates.

August 28, 2009	44370	----------	CMS-2299-FN	Medicare and Medicaid Programs; Application of the American Osteopathic Association for Continued Deeming Authority for Hospitals.
August 28, 2009	44371	----------	CMS-7016-N	Medicare Program; Request for Nominations for the Advisory Panel on Medicare Education.
August 28, 2009	44373	----------	CMS-3214-N	Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee— October 21, 2009.
September 16, 2009	47458	405	CMS-6025-F	Medicare Program; Limitation on Recoupment of Provider and Supplier Overpayments.
September 16, 2009	47517	457	CMS-2291-P	Children's Health Insurance Program (CHIP); Allotment Methodology and States' Fiscal Year 2009 CHIP Allotments.
September 25, 2009	48865	483	CMS-1410-CN	Medicare Program; Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Correction.
September 25, 2009	48974	----------	CMS-2487-FN	Medicare and Medicaid Programs; Application by the American Osteopathic Association for Continued Deeming Authority for Ambulatory Surgical Centers.

September 25, 2009	48976	----------	CMS-4141-N	Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2010.
September 25, 2009	48977	----------	CMS-3215-N	Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee— November 18, 2009.
September 25, 2009	48979	----------	CMS-1814-N	Medicare Program; Listening Session Regarding: Definingan Episode Logic for the Medicare Physician Resource Use Measurement Program; November 10, 2009.
September 25, 2009	48981	----------	CMS-7015-N	Medicare Program; Meeting of the Advisory Panel on Medicare Education, October 20, 2009.
September 25, 2009	48990	----------	CMS-1336-N	Medicare Program; Medicare Provider Feedback Group Town Hall Meeting— October 29, 2009.
September 25, 2009	48992	----------	CMS-3216-N	Medicare Program; Request for Nominations for Members for the Medicare Evidence Development & Coverage Advisory Committee.

September 25, 2009	49076	----------	CMS-9053-N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—April Through June 2009.
September 29, 2009	49922	410, 413, and 414	CMS-1418-P	Medicare Program; End-Stage Renal Disease Prospective Payment System.
September 29, 2009	50103	----------	CMS-1508-N	Medicare Program; Town Hall Meeting on End-Stage Renal Disease Prospective Payment System.

Addendum V—National Coverage Determinations [July Through September 2009]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at http://cms.hhs.gov/coverage.

Title	NCDM Section	TN #	Issue Date	Effective Date
Wrong Surgical or Other Invasive Procedure Performed on a Patient; Surgical or Other Invasive Procedure Performed on the Wrong Body Part; Surgical or Other Invasive Procedure Performed on the Wrong Patient--CLARIFICATION	140.6 140.7 140.8	R102NCD	07/02/09	04/02/09
Changes to the Laboratory NCD Edit Software for October 2009	190.1-190.34	R1766CP	07/10/09	10/01/09

Sleep Testing for Obstructive Sleep Apnea (OSA)	240.4	R103NCD	07/10/09	03/23/09
FDG PET for Solid Tumors and Myeloma	220.6	R104NCD	07/17/09	04/03/09
Screening Computed Tomography Colonography (CTC) for Colorectal Cancer	210.6	F105NCD	08/07/09	05/12/09
FDG PET for Solid Tumors and Myeloma—CLARIFICATION	220.6	R106NCD	09/18/09	04/03/09

Addendum VI
FDA-Approved Category B IDEs
[July Through September 2009]

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved IDE. Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following list includes all Category B IDEs approved by FDA during the second quarter, April through June 2009.

IDE	Category	IDE	Category
BB13996	B	G090121	B
G080183	B	G090123	B
G090002	B	G090135	B
G090024	B	G090136	B
G090042	B	G090143	B
G090080	B	G090146	B
G090082	B	G090150	B
G090084	B	G090153	B
G090089	B	G090155	B
G090093	B	G090156	B
G090095	B	G090159	B
G090096	B	G090164	B
G090097	B	G090166	B
G090098	B	G090172	B
G090103	B		
G090104	B		
G090107	B		
G090109	B		
G090114	B		
G090115	B		
G090117	B		
G090119	B		
G090120	B		

Addendum VII
Approval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB Control Numbers	Approved CFR Sections in Title 42, Title 45, and Title 20 (Note: Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")
OMB NUMBER	Approved CFR Sections
0938-0008	Part 424 Subpart C
0938-0022	413.20, 413.24, 413.106
0938-0023	424.103
0938-0025	406.28, 407.27
0938-0027	486.100 - 486.110
0938-0033	405.807
0938-0035	407.40
0938-0037	413.20, 413.24
0938-0041	408.6, 408.202
0938-0042	410.1, 410.40, 424.124, 424.601, 414.605, 414.610, 414.615, 414.620, 414.625, 424.32
0938-0045	405.711
0938-0046	405.2133
0938-0050	413.20, 413.24
0938-0062	431.151, 435.151, 435.1009, 440.220, 440.250, 442.1, 442.10 - 442.16, 442.30, 442.40, 442.42, 442.100 - 442.119, 483.400 - 483.480, 488.332, 488.400, 498.3 - 498.5
0938-0065	485.701 - 485.729
0938-0074	491.1 - 491.11
0938-0080	406.7, 406.13
0938-0086	420.200 - 420.206, 455.100 - 455.106
0938-0101	430.30
0938-0102	413.20, 413.24

0938-0107	413.20, 413.24
0938-0146	431.800 - 431.865
0938-0147	431.800 - 431.865
0938-0151	493.1 - 493.2001
0938-0155	405.2470
0938-0193	430.10 - 430.20, 440.167
0938-0202	413.17, 413.20
0938-0214	411.25, 489.2, 489.20
0938-0236	413.20, 413.24
0938-0242	488.26 and 442.30
0938-0245	407.10, 407.11
0938-0246	431.800-431.865
0938-0251	406.7
0938-0266	416.1-416.150
0938-0267	485.56, 485.58, 485.60, 485.64, 485.66
0938-0269	412.116, 412.632, 413.64, 413.350, 484.245
0938-0270	405.376
0938-0272	440.180, 441.300 - 441.310
0938-0273	485.701 - 485.729
0938-0279	424.5
0938-0287	447.31
0938-0296	413.170, 413.184
0938-0301	413.20, 413.24, 415.60
0938-0302	418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100
0938-0313	489.11, 489.20
0938-0328	482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, 485.631
0938-0334	491.9, 491.10
0938-0338	486.104, 486.106, 486.110
0938-0354	441.50
0938-0355	442.30, 488.26
0938-0358	488.26
0938-0359	412.40 - 412.52
0938-0360	488.60
0938-0365	484.10, 484.12, 484.14, 484.16, 484.18, , 484.36, 484.48, 484.52
0938-0372	414.330
0938-0378	482.60 - 482.62
0938-0379	442.30, 488.26
0938-0386	405.2100 - 405.2171

0938-0391	488.18, 488.26, 488.28
0938-0426	480.104, 480.105, 480.116, 480.134
0938-0429	447.53
0938-0443	478.18, 478.34, 478.36, 478.42
0938-0444	1004.40, 1004.50, 1004.60, 1004.70
0938-0445	412.44, 412.46, 431.630, 476.71, 476.74, 476.78
0938-0447	405.2133
0938-0448	405.2133, **45 CFR** 5, 5b; **20 CFR** Parts 401, 422E
0938-0449	440.180, 441.300 - 441.310
0938-0454	424.20
0938-0456	412.105
0938-0463	413.20, 413.24, 413.106
0938-0467	431.17, 431.306, 435.910, 435.920, 435.940 - 435.960
0938-0469	417.126, 422.502, 422.516
0938-0470	417.143, 422.6
0938-0477	412.92
0938-0484	424.123
0938-0501	406.15
0938-0502	433.138
0938-0512	486.301 - 486.348
0938-0526	475.102, 475.103, 475.104, 475.105, 475.106
0938-0534	410.38, 424.5
0938-0544	493.1 - 493.2001
0938-0564	411.32
0938-0565	411.20 - 411.206
0938-0566	411.404, 411.406, 411.408
0938-0573	412.256
0938-0578	447.534
0938-0581	493.1 - 493.2001
0938-0599	493.1 - 493.2001
0938-0600	405.371, 405.378, 413.20
0938-0610	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 483.10, 484.10, 489.102
0938-0612	493.801, 493.803, 493.1232, 493.1233, 493.1234, 493.1235, 493.1236, 493.1239, 493.1241, 493.1242, 493.1249, 493.1251, 493,1252, 493.1253, 493.1254, 493.1255, 493.1256, 493.1261, 493.1262, 493.1263, 493.1269, 493.1273, 493.1274, 493.1278, 493.1283, 493.1289, 493.1291, 493.1299
0938-0618	433.68, 433.74, 447.272
0938-0653	493.1771, 493.1773, 493.1777
0938-0657	405.2110, 405.2112

0938-0658	405.2110, 405.2112
0938-0667	482.12, 488.18, 489.20, 489.24
0938-0686	493.551 - 493.557
0938-0688	486.301 - 486.325
0938-0691	412.106
0938-0692	466.78, 489.20, 489.27
0938-0701	422.152
0938-0702	**45 CFR** 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180
0938-0703	**45 CFR** 148.120, 148.122, 148.124, 148.126, 148.128
0938-0714	411.370 - 411.389
0938-0717	424.57
0938-0721	410.33
0938-0723	421.300 - 421.316
0938-0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24
0938-0732	417.126, 417.470
0938-0734	**45 CFR** 5b
0938-0739	413.337, 413.343, 424.32, 483.20
0938-0749	424.57
0938-0753	422.000 - 422.700
0938-0754	441.151, 441.152
0938-0758	413.20, 413.24
0938-0760	484.55, 484.205, 484.245, 484.250
0938-0761	484.11, 484.20
0938-0763	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938-0770	410.2
0938-0778	422.111, 422.564
0938-0779	417.126, 417.470, 422.64, 422.210
0938-0781	411.404, 484.10
0938-0786	438.352, 438.360, 438.362, 438.364
0938-0790	460.12 - 460.210
0938-0792	491.8, 491.11
0938-0796	422.64
0938-0798	413.24, 413.65, 419.42
0938-0802	419.43
0938-0818	410.141 - 410.146, 414.63

0938-0829	422.568
0938-0832	Parts 489 and 491
0938-0833	483.350 - 483.376
0938-0841	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180
0938-0842	412.23, 412.604, 412.606, 412.608, 412.610, 412.614, 412.618, 412.626, 413.64
0938-0846	411.352 - 411.361
0938-0857	Part 419
0938-0860	Part 419
0938-0866	**45 CFR** Part 162
0938-0872	413.337, 483.20
0938-0873	422.152
0938-0874	**45 CFR** Parts 160 and 162
0938-0878	Part 422 Subparts F and G
0938-0887	**45 CFR** 148.316, 148.318, 148.320
0938-0897	412.22, 412.533
0938-0907	412.230, 412.304, 413.65
0938-0910	422.620, 422.624, 422.626
0938-0911	426.400, 426.500
0938-0915	421.120, 421.122
0938-0916	483.160
0938-0920	438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.604, 438.710, 438.722, 438.724, 438.810
0938-0921	414.804
0938-0931	**45 CFR** 142.408, 162.408, and 162.406
0938-0933	438.50
0938-0935	422 Subparts F and K
0938-0936	423
0938-0939	405.502
0938-0944	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938-0950	405.910
0938-0951	423.48

0938-0953	405.1200 and 405.1202
0938-0954	414.906, 414.908, 414.910, 414.914, 414.916
0938-0957	Part 423 Subpart R
0938-0964	403.460, 411.47
0938-0969	421.405
0938-0975	423.562(a)
0938-0976	423.568
0938-0977	Part 423 Subpart R
0938-0978	423.464
0938-0982	422.310, 423.301, 423.322, 423.875, 423.888
0938-0986	412.20-412.30
0938-0990	423.56
0938-0992	423.505, 423.514
0938-0993	1396
0938-0997	424.5
0938-0999	Part 424 Subpart C
0938-1004	423.502
0938-1009	411.357(v), 411.357(w)
0938-1013	423.56(e)
0938-1019	405.1206, 422.622
0938-1020	412.525(a)(4), 412.529(c)(3), 412.84(i)(2)
0938-0123	422.152(a)(1), 422.152(a)(2)
0938-1024	1396
0938-1026	447.520
0938-1013	423.56e
0938-1019	405.1206, 422.622
0938-1023	422.152a
0938-1033	455
0938-1034	489.20
0938-1049	424.36(b)

Addendum VIII
Medicare-Approved Carotid Stent Facilities
[July Through September 2009]

On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients.

Facility	Provider Number	Effective Date	State	Additional Information
East El Paso Physicians Medical Center 1416 George Dieter Drive El Paso, TX 79936	450877	05/14/2009	TX	
New York Westchester Square Medical Center 2475 St. Raymond Avenue Bronx, NY 10461	330316	05/14/2009	NY	
P&S Surgical Hospital 312 Grammont Street Suite 101 Monroe, LA 71201	190246	05/14/2009	LA	
The MetroHealth System 2500 MetroHealth Drive Cleveland, OH 44109-1998	360059	05/20/2009	OH	

Clarian Arnett Health 5165 McCarty Lane Lafayette, IN 47905	150173	07/02/2009	IN	
Maury Regional Medical Center 1224 Trotwood Avenue Columbia, TN 38401	440073	07/02/2009	TN	
Tulane Medical Center 1415 Tulane Avenue New Orleans, LA 70112	190176	07/02/2009	LA	
Northeast Baptist Hospital 8811 Village Drive San Antonio, TX 78217	450058	10/04/2005	TX	
St. Luke's Baptist Hospital 7930 Floyd Curl Drive San Antonio, TX 78229	450058	10/04/2005	TX	
Southeast Baptist Hospital 4214 East Southcross Boulevard San Antonio, TX 78222	450058	10/04/2005	TX	
North Central Baptist Hospital 520 Madison Oak Drive San Antonio, TX 78258	450058	10/04/2005	TX	
Jeanes Hospital 7600 Central Avenue Philadelphia, PA 19111	390080	07/30/2009	PA	
Bayshore Medical Center 4000 Spence Highway Pasadena, TX 77504	450097	08/13/2009	TX	
CHRISTUS Hospital 3600 Gates Boulevard Port Arthur, TX 77642	450034	02/02/2006	TX	St. Mary
Peace River Regional Medical Center 2500 Harbor Boulevard Port Charlotte, FL 33952	100077	08/24/2009	FL	

Jennings American Legion Hospital 1634 Elton Road Jennings, LA 70546	190053	09/11/2009	LA	
Mayo Clinic hospital 4500 San Pablo Road Jacksonville, FL 32224	100151	06/29/2005	FL	
Capital Health System – Mercer Campus 446 Bellevue Avenue Trenton, NJ 08618	1073516183	09/28/2009	NJ	
Goshen General Hospital 200 High Park Avenue Goshen, IN 46526	1740268846	09/28/2009	IN	
University of Miami Hospital 1400 N.W. 12th Avenue Miami, FL 33136-5511	100009	10/15/2009	FL	

Addendum IX

American College of Cardiology's National Cardiovascular Data Registry Sites [July Through September 2009]

In order to obtain reimbursement, Medicare national coverage policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. This policy became effective January 27, 2005. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare National Coverage Determination (NCD) Manual, which is on the Centers for Medicare & Medicaid Services (CMS) Web site at http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961 .

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD registry. Therefore, in order for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry.

We maintain a list of facilities that have been enrolled in this registry. Addendum IX includes the facilities that have been designated in the quarter covered by this notice.

Facility Name	Address1	Address2	City	State	Zip
Abbott Northwestern Hospital	800 East 28th Street (Internal Zip 33210)		Minneapolis	MN	55407
Abilene Regional Medical Center	6250 Highway 83-84 Antilley Road		Abilene	TX	97606
Abington Memorial Hospital	1200 York Road	5 Toll-AMH	Abington	PA	19446
Adena Regional Medical Center	272 Hospital Road		Chillicothe	OH	45601
Adventist Bolingbrook Hospital	120 North Oak Street		Bolingbrook	IL	60440
Adventist Glen Oaks Hospital	701 Winthrop Avenue		Glendale Heights	IL	60139
Adventist Hinsdale Hospital	120 N. Oak Street		Hinsdale	IL	60521
Adventist Medical Center	10123 SE Market Street		Portland	OR	97216
Advocate Christ Medical Center	4440 West 95th Street	#127NOB	Oak Lawn	IL	60453
Advocate Condell Medical Center	801 S. Milwaukee Avenue		Libertyville	IL	60048
Advocate Good Shepherd Hospital	450 W. Highway 22		Barrington	IL	60010
Advocate Illinos Masonic Medical Center	836 W. Wellington Avenue		Chicago	IL	60657

Advocate Lutheran General Hospital	1775 Dempster Street		Park Ridge	IL	60068
Affinity Medical Center	400 Austin Avenue		Massillon	OH	44646
Aiken Regional Medical Center	302 University Parkway		Aiken	SC	29802
Akron City Hospital	525 East Market Street		Akron	OH	44309-2090
Akron General Medical Center	400 Wabash Avenue	Heart & Vascular Center	Akron	OH	44307
Alamance Regional Medical Center	PO Box 202		Burlington	NC	27216
Alaska Regional Hospital	2801 Debarr Road		Anchorage	AK	99508
Albany Medical Center Hospital	43 New Scotland Avenue		Albany	NY	12208
Albert Einstein Medical Center	5501 Old York Road		Philadelphia	PA	19141
Alegent Health Bergan Mercy Medical Center	7500 Mercy Road		Omaha	NE	68124
Alegent Health Immanuel Medical Center	6828 North 72nd Street	Suite 3000N	Omaha	NE	68122-1709
Alegent Health Mercy Hospital	6901 North 72nd Street		Omaha	NE	68122
Alexian Brothers Medical Center	800 Biesterfield Road		Elk Grove Village	IL	60007-3311

Allegheny General Hosptial	320 East North Avenue		Pittsburg	PA	15212
Allegiance Health (W.A. Foote Memorial Hospital)	205 N. East Avenue	Heart Center 1st Floor	Jackson	MI	49201
Allen Memorial Hospital	1825 Logan Avenue		Waterloo	IA	50703
Alpena Regional Medical Center	1501 W. Chisholm Street		Alpena	MI	49707
Alta Bates Medical Center	2450 Ashby Avenue		Berkeley	CA	94705
Alta Bates Summit Medical Center	350 Hawthorne Avenue		Oakland	CA	94609
Alton Memorial Hospital	1 Memorial Drive		Alton	IL	62067
Altoona Hospital	620 Howard Avenue		Altoona	PA	16601
Altru Health System	1200 South Columbia Road		Grand Forks	ND	58201
Alvarado Hospital	6645 Alvarado Road		San Diego	CA	92120
Amarillo Endoscopy Center	6833 Plum Creek Drive		Amarillo	TX	79124
Anaheim Memorial Medical Center	1111 W. La Palma Avenue		Anaheim	CA	92801
AnMed Health	800 North Fant Street		Anderson	SC	29621
Anna Jaques Hospital	25 Highland Avenue		Newburyport	MA	01950

Anne Arundel Medical Center	2001 Medical Parkway		Annapolis	MD	21404
Appleton Medical Center/ThedaClark Medical Center	1818 N. Meade Street	Rm 165-B	Appleton	WI	54911
Aria Health	Knights and Red Lion Roads		Philadelphia	PA	19114
Arizona Heart Hospital	1930 East Thomas Road		Phoenix	AZ	85016
Arizona Regional Medical Center	4838 East Baseline Road	Suite 109-110	Mesa	AZ	85206
Arkansas Heart Hospital	1701 S. Shackelford Road		Little Rock	AR	72202
Arlington Memorial Hospital	800 W. Randol Mill Road		Arlington	TX	76012
Arnot-Ogden Medical Center	600 Roe Avenue		Elmira	NY	14905
Arrowhead Hospital	18701 N. 67th Avenue		Glendale	AZ	85308
Ashtabula County Medical Center	2420 Lake Avenue		Ashtabula	OH	44004
Aspirus Wausau Hospital	333 Pine Ridge Boulevard		Wausau	WI	54401
Athens Regional Medical Center	1199 Prince Avenue		Athens	GA	30606
Atlanta Medical Center	303 Parkway Drive NE		Atlanta	GA	30312
Atlanticare Regional Medical Center	2500 English Creek Avenue		Egg Habour Township	NJ	08234

Atrium Medical Center	One Medical Center		Franklin	OH	45005
Audrain Medical Center	620 E. Monroe Street		Mexico	MO	65265
Aultman Hospital	2600 Sixth Street SW		Canton	OH	44710
Aurora BayCare Medical Center	2845 Greenbrier Road		Green Bay	WI	54308
Aurora Medical Center – Kenosha	2900 W. Oklahoma Avenue		Milwaukee	WI	53132
Aurora Medical Center of Washington County	1032 E. Sumner Street		Hartford	WI	53027
Aurora Medical Center Oshkosh	855 N. Westhaven Street		Oshkosh	WI	53132
Aurora Memorial Hospital of Burlington	2900 W. Oklahoma Avenue		Milwaukee	WI	53215
Aurora Sheboygan Memorial Medical Center	2629 N. 7th Street		Sheboygan	WI	53083
Aurora Sinai Medical Center	945 N. 12th Street		Milwaukee	WI	53233
Aurora West Allis Memorial Hospital	2900 E. Oklahoma Avenue		Milwaulee	WI	53215
Auxilio Mutuo Hospital	Apartado 191227		San Juan	PR	00919-1227
Aventura Hospital and Medical Center	5631 Glencrest Boulevard		Tampa	FL	33625-1008
Avera Heart Hospital of South Dakota	4500 West 69th Street		Sioux Falls	SD	57108

Avera Sacred Heart Hospital	501 Summit		Yankton	SD	57078
Avera St. Luke's	305 South State Street		Aberdeen	SD	57401
Bakersfield Heart Hospital	3001 Sillect Avenue		Bakersfield	CA	93308
Bakersfield Memorial Hospital	420 34th Street	PO Box 1888	Bakersfield	CA	93303-1888
Ball Memorial Hospital	2401 University Avenue		Muncie	IN	47303
Baltimore Washington Medical Center	301 Hosptial Drive	2nd Floor Cardiac Cath Lab	Glen Burnie	MD	21061
Banner Boswell Medical Center	10401 W. Thunderbird Boulevard		Sun City	AZ	85351
Banner Desert Medical Center	Banner Desert Medical Center, Quality Management	1400 S. Dobson Road	Mesa	AZ	85202
Banner Estrella Medical Center	9201 W. Thomas Road		Phoenix	AZ	85037
Banner Good Samaritan Med Center	1111 East McDowell Road		Phoenix	AZ	85006-2612
Banner Heart Hospital	6750 E. Baywood Avenue		Mesa	AZ	85206
Banner Thunderbird Med Center	5555 W. Thunderbird Road		Glendale	AZ	85306
Baptist Health Medical Center	9601 Interstate 630 Exit 7		Little Rock	AR	72205-7299
Baptist Health Medical Center	3333 Springhill Drive		North Little Rock	AR	72117

Baptist Hospital	1000 W. Moreno Street		Pensacola	FL	32501
Baptist Hospital	4220 Harding Road		Nashville	TN	37202
Baptist Hospital East	4000 Kresge Way		Louisville	KY	40207
Baptist Hospital of Miami	8900 SW 88th Street		Miami	FL	33176
Baptist Hospital of Southeast Texas	PO Box 1591	3080 College Street	Beaumont	TX	77704
Baptist Hospital West	900 E. Oak Hill Avenue		Knoxville	TN	37917
Baptist Medical Center	800 Prudential Drive		Jacksonville	FL	32207
Baptist Medical Center	730 North Main Avenue	Suite 409	San Antonio	TX	78205
Baptist Memorial Hospital North Mississippi	2301 South Lamar Boulevard		Oxford	MS	38655
Baptist Memorial Hospital	6019 Walnut Grove Road		Memphis	TN	38120
Baptist Memorial Hospital-Desoto	7601 Southcrest Parkway		Southaven	MS	38671
Baptist Memorial Hospital-Union City	1201 Bishop Street		Union City	TN	38261
Baptist St. Anthony's Health Systems	1600 Wallace Boulevard		Amarillo	TX	79106
Barberton Citizens Hospital	155 5th Street NE		Barberton	OH	44203
Barnes Jewish Hospital/Washington University	#1 Barnes Jewish Hospital Plaza	SW Tower-Main. Mailstop 90-59-315	Saint Louis	MO	63110-9930

Barstow Community Hospital	555 South Seventh Street		Barstow	CA	92311
Bartow Regional Medical Center	2200 Osprey Boulevard		Bartow	FL	33830
Bassett Healthcare-(Mary Imogene Bassett Hospital)	One Atwell Road		Cooperstown	NY	13326
Baton Rouge General Medical Center	3600 Florida Boulevard		Baton Rouge	LA	70806
Battle Creek Health System	300 North Avenue		Battle Creek	MI	49016
Baxter Regional Medical CenterAttn: A/P	624 Hospital Drive		Mountain Home	AR	72653
Bay Medical Center	615 North Bonita Avenue		Panama City	FL	32401
Bay Regional Medical Center	1900 Columbus Avenue		Bay City	MI	48708
Bayfront Medical Center	701 Sixth Street South		St. Petersburg	FL	33701
Bayhealth Medical Center(KGH)	640 S. State Street		Dover	DE	19901
Baylor All Saints Medical Center at Fort Worth	1400 8th Avenue		Fort Worth	TX	76104
Baylor Jack and Jane Hamilton Heart and Vascular Hospital	621 North Hall Street		Dallas	TX	75226

Baylor Medical Center at Garland	2300 Marie Curie Drive		Garland	TX	75042
Baylor Medical Center at Irving	1901 North MacArthur Boulevard		Irving	TX	75061
Baylor Regional Medical Center at Grapevine	1650 West College Street		Grapevine	TX	76051
Bayshore Medical Center	4000 Spencer Highway		Pasadena	TX	77504
Baystate Medical Center	759 Chestnut Street	Springfield 4 4558	Springfield	MA	01199
Beauregard Memorial Hospital	600 S. Pine Street		Deridder	LA	70634
Bellevue Hospital Center	462 First Avenue		New York	NY	10016
Bellin Memorial Hospital	744 S. Webster Avenue	Cardiac Data Center 5th Floor	Green Bay	WI	54301
Benefis Healthcare	1101 26th Street South		Great Falls	MT	59405-5161
Berkshire Medical Center, Inc.	725 North Street		Pittsfield	MA	01201-4124
Bert Fish Medical Center	401 Palmetto Street		New Smyrna Beach	FL	32168
Beth Israel Deaconess Medical Center	185 Pilgrim Road		Boston	MA	02215
Bethesda Memorial Hospital	2815 S. Seacrest Blvd		Boynton Beach	FL	33435
Bethesda North Hospitals	375 Dixmyth Avenue		Cincinnati	OH	45220-2489

Beverly Hospital	85 Herrick Street		Beverly	MA	01915
Bexar County Hospital District d.b.a. University Health	4502 Medical Drive	Stop 34-1	San Antonio	TX	78229
Billings Clinic (formerly Deaconess)	2800 9th Avenue, North		Billings	MT	59101
Biloxi Regional Medical Center	150 Reynoir Street		Biloxi	MS	39531
Blake Medical Center	2020 59th Street West		Bradenton	FL	34209
Blanchard Valley Hospital	1900 South Main Street	HeartCare Center	Findlay	OH	45840
Blessing Hospital	1005 Broadway	PO Box 7005	Quincy	IL	62305-7005
Bloomington Hospital	601 W. Second Street	PO Box 1149	Bloomington	IN	47403
Boca Raton Community Hospital	12201 NW Second Place		Coral Springs	FL	33071
Bon Secours DePaul Medical Center	5801 Bremo Road	Suite 310, North Medical Office Building	Richmond	VA	23226
Bon Secours – Maryview Medical Center	5801 Bremo Road	Suite 310, North Medical Office Building	Richmond	VA	23226

Bon Secours-Memorial Regional Medical Center	5801 Bremo Road	Suite 310, North Medical Office Building	Richmond	VA	23226
Bon Secours St Francis Medical Center	5801 Bremo Road	Suite 310, North Medical Office Building	Richmond	VA	23226
Bon Secours St. Marys Hospital	5801 Bremo Road	Suite 310, North Medical Office Building	Richmond	VA	23226
Boone Hospital Center	1600 E. Broadway		Columbia	MO	65201-5897
Borgess Medical Center	1521 Gull Road		Kalamazoo	MI	49048
Boston Medical Center	One Boston Medical Place		Boston	MA	02118
Bothwell Regional Health Center	601 East 14th Street		Sedalia	MO	65301
Botsford Hospital	28050 Grand River Avenue		Farmington Hills	MI	48336
Boulder Community Hospital	1100 Balsam Avenue		Boulder	CO	80304
Braddock Campus	900 Seton Drive		Cumberland	MD	21502-1850
Brandon Regional Hospital	119 Oakfield Drive		Brandon	FL	33511
Brandywine Hospital	201 Reeceville Road		Coatesville	PA	19320

Bridgeport Hospital	267 Grant Street		Bridgeport	CT	06610
Brigham & Womens Hospital	75 Francis Street	L258A	Boston	MA	02115
Bromenn Hospital	PO Box 2850		Bloomington	IL	61702-2850
Bronson Methodist Hospital	601 John Street		Kalamazoo	MI	49007-5348
Brookdale Hospital & Medical Center	1 Brookdale Plaza		Brooklyn	NY	11212
Brooklyn Hospital Center	121 DeKalb Avenue		Brooklyn	NY	11201
Brooksville Regional Hospital	17240 Cortez Boulevard		Brooksville	FL	34601
Brookwood Medical Center	2010 Brookwood Medical Center		Birmingham	AL	35209
Broward General Medical Center	1600 S. Andrews Avenue		Ft. Lauderdale	FL	33316
Bryan LGH Medical Center	1600 South 48th Street		Lincoln	NE	68526
Bryn Mawr Hospital	Suite 557 Lankenau MOB East	100 Lancaster Avenue	Wynnewood	PA	19096
Buffalo General Hospital	3 Gates Circle		Buffalo	NY	14209
Cabell Huntington Hospital	1340 Hal Greer Boulevard		Huntington	WV	25701
California Pacific Medical Center	2330 Clay Street, Stern Building, Room #103	Stern Building, Room #103	San Francisco	CA	94115
CAMC Teays Valley Hospital	1400 Hospital Drive		Hurricane	WI	25526

Camden-Clark Memorial Hospital	800 Garfield Avenue		Parkersburg	WV	26101
Candler Hospital, Inc.	5353 Reynolds Street		Savannah	GA	31405
Cape Canaveral Hospital	701 West Cocoa Beach Causeway		Cocoa Beach	FL	32931
Cape Cod Hospital	40 Quinlan Way		Hyannis	MA	02601
Cape Fear Valley Health System	303 Wagoner Drive		Fayetteville	NC	28303-4646
Capital Medical Center	3900 Capital Mall Drive		Olympia	WA	98502
Capital Regional Medical Center	□arbara.scott3@ hcahealthcare.com		Tallahassee	FL	32308
Capital Regional Medical Center	1125 Madison Street (PO Box 1128)		Jefferson City	MO	65102-1128
Cardiovascular Center of Puerto Rico	PO Box 366528		San Juan	PR	00936-6528
Carilion Roanoke Memorial Hosp	Att: Cardiac Cath Lab	PO Box 13367	Roanoke	VA	24033-3367
Caritas Good Samaritan Medical Center	235 North Pearl Street		Brockton	MA	02301
Caritas Norwood Hospital	800 Washington Street		Norwood	MA	02062
Caritas St. Elizabeths Medical Center	736 Cambridge Street		Boston	MA	02135
Carle Foundation Hospital	611 W. Park Street		Urbana	IL	61801
Carolina Pines Regional Medical Center	1304 W. BoBo Newsom Highway		Hartsville	SC	29550

Carolinas Hospital System	805 Pamplico Highway		Florence	SC	29505
Carolinas Medical Center	1001 Blythe Boulevard		Charlotte	NC	28227
Carolinas Medical Center – Mercy	2001 Vail Avenue	Cath Lab	Charlotte	NC	28207
Carondelet Heart Institute at St. Joseph Medical Center	1000 Carondelet Drive		Kansas City	MO	64114
Carroll Hospital Center	200 Memorial Avenue		Westminster	MD	21157
Carson Tahoe Regional Medical Center	1600 Medical Parkway		Carson City	NV	89706
Cartersville Medical Center	PO Box 20008		Cartersville	GA	30120
Casa Grande Regional Medical Center	1800 E. Florence Boulevard		Casa Grande	AZ	85222
Castleview Hospital	300 North Hospital Drive		Price	UT	84501
Catawba Valley Medical Center	810 Fairgrove Church Road		Hickory	NC	28602
Catholic Medical Center	100 McGregor Street	Level C Room 248	Manchester	NH	03102-3770
Cayuga Medical Center at Ithaca	101 Dates Drive		Ithaca	NY	14850
Cedars-Sinai Health Systems	8700 Beverly Boulevard	MGB 901	Los Angeles	CA	90048

Centennial Hills Hospital Medical Center	6900 N. Durango Drive		Las Vegas	NV	89149-4409
Centennial Medical Center	12505 Lebanon Boulevard		Frisco	TX	75035
Centennial Medical Center	2300 Patterson Street		Nashville	TN	37203
Centerpoint Medical Center	19600 E. 39th Street		Independence	MO	64057
Centinela Hospital Medical Center	555 E. Hardy Street		Inglewood	CA	90301
Central Baptist Hospital	1800 Nicholasville Road Suite 401		Lexington	KY	40503
Central DuPage Hospital	25 N. Winfield Road		Winfield	IL	60190
Central Florida Regional Hospital	1401W. Seminole Boulevard		Sanford	FL	32771
Central Maine Medical Center	CMHVI 60 High Street		Lewiston	ME	04240
Central Minnesota Heart Center at St. Cloud Hospital	1406 Sixth Avenue North		St. Cloud	MN	56303
Central Mississippi Medical Center	1850 Chadwick Drive		Jackson	MS	39204
Central Washington Hospital	1201 South Miller Street		Wenatchee	WA	98801
Chandler Regional Medical Center	475 S. Dobson Road	Quality Management Department	Chandler	AZ	85224

Charleston Area Medical Center	501 Morris Street		Charleston	WV	25301
Charlotte Regional Medical Center	809 East Marion Avenue		Punta Gorda	FL	33950
Charlton Memorial Hospital	363 Highland Avenue		Fall River	MA	02720-3700
Chattanooga-Hamilton County Hospital Authority/ER	975 E. Third Street		Chattanooga	TN	37403
Chesapeake General Hospital	736 Battlefield Boulevard North		Chesapeake	VA	23320
Cheshire Medical Center	580 Court Street		Keene	NH	03431
Chester County Hospital	701 E. Marshall Street		West Chester	PA	19380
Chester River Hospital Center	100 Brown Street		Chestertown	MD	21620
Cheyenne Regional Medical Center	Cheyenne Regional Medical Center	214 E. 23rd Street	Cheyenne	WY	82001
Christian Hospital	11133 Dunn Road		St Louis	MO	63136
Christiana Care Health System	4755 Ogletown-Stanton Road		Newark	DE	19718
Christus Hospital-St. Mary	3600 Gates Boulevard		Port Arthur	TX	77642
Christus Saint Elizabeth Hospital	2830 Calder Street		Beaumont	TX	77702
Christus Santa Rosa Hospital	333 N. Santa Rosa Street		San Antonio	TX	78207

Christus Spohn Hospital Corpus Christi – Shoreline	600 Elizabeth Street		Corpus Christi	TX	78404
Christus St. Catherine	701 S. Fry Road		Katy	TX	77450
Christus St. John Hospital	18300 St. John Drive	Cath Lab	Nassau Bay	TX	77058
Christus St. Michael Health System	2600 St. Michael Drive		Texarkana	TX	75503
Christus St. Patrick Hospital	524 South Ryan Street		Lake Charles	LA	70602-3401
Christus – Schumpert Highland Hospital	One St. Mary Place		Shreveport	LA	71101
Christus – St. Frances Cabrini Hospital	3330 Masonic Drive	Cath Lab	Alexandria	LA	71301
Citrus Memorial Health System	502 W. Highland Boulevard		Inverness	FL	34452
CJW Medical Center	7101 Jahnke Road		Richmond	VA	23225-4044
Claremore Regional Hospital	1202 N. Muskogee Place		Claremore	OK	74017
Clarian Health Partners-Methodist Hospital campus	1701 N. Senate Boulevard	Room A1082	Indianapolis	IN	46202
Clarian North Medical Center	11725 Illinois Street B-178		Carmel	IN	46032
Clark Memorial Hospital	1220 Missouri Avenue		Jeffersonville	IN	47130
Clear Lake Regional Medical Center	500 Medical Center Boulevard		Webster	TX	77598

Cleveland Clinic Florida	3100 Weston Road		Weston	FL	33331
Cleveland Clinic Foundation	9500 Euclid Avenue		Cleveland	OH	44195
Coliseum Medical Centers	350 Hospital Drive		Macon	GA	31217
College Station Medical Center	1604 Rock Prairie Road		College Station	TX	77845
Columbia Hospital	4425 North Port Washington Road		Glendale	WI	53212
Columbia Regional Hospital	404 Keene Street		Columbia	MO	65201
Columbia St. Mary's Hospital Ozaukee	13111 N. Port Washington Road		Mequon	WI	53097
Columbus Cardiovascular Care, PLLC	2520 5th Street North PO Box 1307		Columbus	MS	39703
Columbus Regional Hospital	2400 17th Street		Columbus	IN	47201
Comanche County Memorial Hospital	3401 W. Gore Boulevard	PO Box 129	Lawton	OK	73505
Community Health Partners	3700 Kolbe Road		Lorain	OH	44053
Community Hospital	5637 Marine Parkway		New Port Richey	FL	34652
Community Hospital	The Community Hospital	901 MacArthur Boulevard	Munster	IN	46321
Community Hospital and Wellness Center	433 West High Street		Bryan	OH	43506

Community Hospital East	Cardiovascular Services	1500 North Ritter Avenue	Indianapolis	IN	46219
Community Hospital of the Monterey Peninsula	PO Box HH		Monterey	CA	93942-1085
Community Hospital South	1500 N. Ritter Avenue		Indianapolis	IN	46219-3027
Community Medical Center	2827 Fort Missoula Road		Missoula	MT	59804
Community Medical Center	99 Highway 37 West		Toms River	NJ	08775
Community Medical Center	1800 Mulberry Street		Scranton	PA	18510
Community Medical Center-Clovis	2755 Herndon Avenue		Clovis	CA	93611
Community Memorial Hospital	147 N. Brent Street		Ventura	CA	93003
Community Memorial Hospital	W180 N8085 Town Hall Road		Menomonee Falls	WI	53052
CommunityMercy AKA Springfield Regional Medical Center	2615 E. High Street		Springfield	OH	45525
Concord Hospital	250 Pleasant Street		Concord	NH	03301
Conroe Regional Medical Center	504 Medical Center Boulevard		Conroe	TX	77304
Covenant Heart Institute	3615 19th Street		Lubbock	TX	79410
Conway Regional Medical Center	2302 College Avenue		Conway	AR	72034-6226

Cooley Dickinson Hospital	30 Locust Street		Northampton	MA	01060
Cooper University Hospital	One Cooper Plaza	D386B	Camden	NJ	08103
Coral Gables Hospital	3100 Douglas Road		Coral Gables	FL	33134
Corpus Christi Medical Center	7101 SPID		Corpus Christi	TX	78412
County of Santa Clara	751 S. Bascom Avenue		San Jose	CA	95128
Covenant Healthcare	1447 N. Harrison Street		Saginaw	MI	48602
Covenant Medical Center	3421 West Ninth Street		Waterloo	IA	50702
Cox Medical Center South	3801 S. National Avenue		Springfield	MO	65807
Craven Regional Medical Center	2000 Neuse Boulevard	PO Box 12157	New Bern	NC	28560
Creighton University Medical Center	601 N. 30th Street		Omaha	NE	68131
Crestwood Medical CenterTriad Hospitals, Inc.	One Hospital Drive		Huntsville	AL	35801-3495
Crittenton Hospital Medical Center	1101 W. University Drive		Rochester	MI	48307-1831
Crouse Hospital	736 Irving Avenue		Syracuse	NY	13210
Crozer Chester Medical Center	1 Medical Center Boulevard		Chester	PA	19013-3995
Cumberland Cardiology	5000 US Route 321		Prestonsburg	KY	41653

CVPH Medical Center	75 Beekman Street		Plattsburgh	NY	12901
Cypress Fairbanks Medical Center	10655 Steepletop Drive		Houston	TX	77065
Dallas Regional Medical Center	1011 N. Galloway Avenue		Mesquite	TX	75149
Dameron Hospital	525 W. Acacia Street		Stockton	CA	95203
Danbury Hospital	24 Hospital Avenue	Cardiology 2 South	Danbury	CT	06810
Dauterive Hospital	600 N. Lewis Street		New Iberia	LA	70563
Davis Hospital	1600 West Antelope Drive		Layton	UT	84041
DCH Regional Medical Center	809 University Boulevard E		Tuscaloosa	AL	35401-2029
Deaconess Hospital	311 Straight Street		Cincinnati	OH	45219
Deaconess Hospital	5501 N. Portland Avenue		Oklahoma City	OK	73112
Deaconess Hospital	600 Mary Street		Evansville	IN	47747
Deaconess Medical Center	W. 800 Fifth Avenue		Spokane	WA	99204
Deborah Heart & Lung Center	200 Trenton Road		Browns Mills	NJ	08015
Decatur General Hospital	1201 7th Street		Decatur	AL	35601
Dekalb Medical Center	2701 N. Decatur Road		Decatur	GA	30033
Dekalb Regional Medical Center	200 Medical Center Drive		Fort Payne	AL	35968
Del Sol Medical Center	10301 Gateway West		El Pasoq	TX	79925

Delray Medical Center	5352 Linton Boulevard		Delray Beach	FL	33484
Delta Regional Medical Center	1400 E. Union Street		Greenville	MS	38702
Denton Regional Medical Center	3535 South I-35E		Denton	TX	76205
Denver Health Medical Center	777 Bannock Street		Denver	CO	80204
DePaul Health Center	12303 DePaul Drive		Bridgeton	MO	63044
Des Peres Hospital	2345 Dougherty Ferry Road		St. Louis	MO	63122
Desert Regional Medical Center	1150 N. Indian Canyon		Palm Springs	CA	92262
DeTar Hospital	506 E. San Antonio Street		Victoria	TX	77902
Dixie Regional Medical Center	1380 E. Medical Drive		St. George	UT	84790
Doctors Hospital	5000 University Drive		Miami	FL	33146
Doctors Hospital	5100 West Broad Street		Columbus	OH	43228
Doctors Hospital	9440 Poppy Drive		Dallas	TX	75218
Doctor's Hospital	3983 I-49 S. Service Road		Opelousas	LA	70570
Doctors Hospital at Renaissance	5501 S. McColl Road		Edinburg	TX	78539
Doctors Hospital – Augusta	3651 Wheeler Drive		Augusta	GA	30909
Doctors Hospital of Sarasota	5731 Bee Ridge Road		Sarasota	FL	34233

Doctors Hospital-Tidwell	510 West Tidwell Road		Houston	TX	77091
Doctors Medical Center	2000 Vale Road		San Pablo	CA	94806
Doctors Medical Center	1441 Florida Avenue		Modesto	CA	95350
Dominican Santa Cruz Hospital	1555 Soquel Drive		Santa Cruz	CA	95065
Downey Regional Medical Center	11500 Brookshire Avenue		Downey	CA	90241
Doylestown Hospital	595 West State Street		Doylestown	PA	18901
DuBois Regional Medical Center	100 Hospital Avenue		DuBois	PA	15801
Duke Raleigh Hospital	3400 Wake Forest Road		Raleigh	NC	27609
Duke University Hospital	Erwin Road DUMC 3943		Durham	NC	27710
Dunn Memorial Hospital	1600 23rd Street		Bedford	ID	47421
Durham Regional Hospital	3634 Roxboro Road		Durham	NC	27704
East Alabama Medical Center	2000 Pepperall Parkway		Opelika	AL	36830
East Georgia Regional Medical Center	1499 Fair Road (PO Box 1048)		Statesboro	GA	30459
East Jefferson General Hospital	4200 Houma Boulevard	Quality Management Department	Metairie	LA	70006

East Texas Medical Center	1000 S. Beckham Avenue		Tyler	TX	75711
Eastern Idaho RMC	3100 Channing Way		Idaho Falls	ID	83404
Eastern Maine Medical Center	489 State Street	PO Box 404	Bangor	ME	04402-0404
Easton Hospital (Northampton Hospital Corp.)	250 South 21st Street		Easton	PA	18042
Edward Hospital	120 Spalding Drive #205		Naperville	IL	60540
Eisenhower Medical Center	39000 Bob Hope Drive		Rancho Mirage	CA	92270
El Camino Hospital	2500 Grant Road		Mountain View	CA	94040
Eliza Coffee Memorial Hospital	603 West College Street		Florence	AL	35630
Elkhart General Hospital	600 East Boulevard	3 South Suites	Elkhart	IN	46514-2499
Elliot Hospital	1 Elliot Way		Manchester	NH	03103
Ellis Hospital	1101 Nott Street		Schenectady	NY	12308
Elmhurst Hospital Center	79-01 Broadway	Dept of Cardiology, Suite D-54	Elmhurst	NY	11373
Elmhurst Memorial Hospital Marquardt Memorial Lib	200 Berteau Avenue		Elmhurst	IL	60126
EMH Regional Medical Center	630 East River Street		Elyria	OH	44035
Emory Crawford Long Hospital	550 Peachtree Street		Atlanta	GA	30308
Emory Dunwoody	4575 North Shallowford		Atlanta	GA	30338

Medical Center	Road				
Emory Eastside Medical Center	1700 Medical Way		Snellville	GA	30078
Emory Johns Creek	6325 Hospital Parkway		Johns Creek	GA	30097
Emory University Hospital	1364 Clifton Road, NE C408		Atlanta	GA	30322
Englewood Community Hospital (HCA)	700 Medical Boulevard		Englewood	FL	34223
Englewood Hospital & Medical Center	350 Engle Street		Englewood	NJ	07631
Enloe Medical Center	1600 Esplanade		Chico	CA	95926
Erie County Medical Center	462 Grider Street		Buffalo	NY	14215
Evergreen Healthcare	12040 NE 128th Street MS21		Kirkland	WA	98034
Excela Health Westmoreland Hospital	532 West Pittsburgh Street		Greensburg	PA	15601
Exempla good Samaritan Medical Center	2420 W. 26th Avenue Building D Suite 100		Denver	CO	80211
Exempla Lutheran Medical Center	2420 W. 26th Avenue Building D Suite 140		Denver	CO	80211
Exempla Saint Joseph Hospital	2420 W. 26th Avenue Building D Suite 140		Denver	CO	80211

Exeter Hospital	5 Alumni Drive		Exeter	NH	03833
F.E. Lajam, MD PC	140-04 58th Road		Flushing	NY	11355
Fairfield Cardiac Cath Labs	3000 Mack Road	Suite 200	Fairfield	OH	45014
Fairfield Medical Center	401 N. Ewing Street		Lancaster	OH	43130
Fairview Hospital	18101 Lorain Road #329		Cleveland	OH	44111
Fairview Park Hospital	PO Box 1408		Dublin	GA	31021
Fairview Southdale Hospital	6401 France Avenue South		Edina	MN	55435
Faith Regional Health Services	2700 W. Norfolk Avenue		Norfolk	NE	68701
Fawcett Memorial Hospital	21298 Olean Boulevard		Port Charlotte	FL	33949-4960
Faxton – St. Luke's Campus	1656 Champlin Avenue		New Hartford	NY	13413
FirstHealth Moore Regional Hospital	155 Memorial Drive		Pinehurst	NC	28374
Fisher-Titus Medical Center	272 Benedict Avenue		Norwalk	OH	44857
Flagler Hospital	400 Health Park Boulevard		St. Augustine	FL	32086
Flagstaff Medical Center	1200 N. Beaver Street		Flagstaff	AZ	86001-3198
Fletcher Allen Health Care	111 Colchester Avenue		Burlington	VT	05401
Florida Hospital Zephyrhills	5631 Glencrest Boulevard		Tampa	FL	33625-1008

Florida Hospital	601 East Rollins Street	Box 99	Orlando	FL	32803
Florida Hospital Fish Memorial	1055 Saxon Boulevard		Orange City	FL	32763
Florida Hospital Ormond Memorial	875 Sterthaus Avenue		Ormond Beach	FL	32174
Florida Hospital Waterman, Inc.	1000 Waterman Way		Tavares	FL	32778
Flowers Hospital	4370 West Main Street		Dothan	AL	36305
Floyd Medical Center	304 Turner McCall Boulevard		Rome	GA	30165
Floyd Memorial Hospital	1850 State Street		New Albany	IN	47150
Forrest General Hospital	6051 Highway 49 South		Hattiesburg	MS	39404-6389
Forsyth Medical Center	3333 Silas Creek Parkway	Clinical Improvement Box 102	Winston-Salem	NC	27103
Fort Sanders Regional Medical Center	1901 Clinch Avenue		Knoxville	TN	37916-2307
Fort Walton Beach Medical Center	1000 Mar Walt Drive		Fort Walton Beach	FL	32547
Forum Health – Northside Medical Center	500 Gypsy Lane		Youngstown	OH	44501-0240
Fountain Valley Regional Hosp	17100 Euclid Street		Fountain Valley	CA	92708-4004
Frankfort Regional Medical Center	299 Kings Daughter Drive		Frankfort	KY	40601

Franklin Square Hospital	9000 Franklin Square Drive		Baltimore	MD	21237
Frederick Memorial Hospital	400 W. Seventh Street		Frederick	MD	21710
Freeman Hospital	1102 W. 32nd Street	1102 W. 32nd Street	Joplin	MO	64804
Freeport Health Network	1045 W. Stephenson Street		Freeport	IL	61032
Fremont Area Medical Center	450 East 23rd Street		Fremont	NE	68025
French Hospital Medical Center	1911 Johnson Avenue		St Luis Obispo	CA	93401
Fresno Community Hospital and Medical Center	2823 Fresno Street		Fresno	CA	93721
Fresno Heart Hospital	15 East Audubon Drive		Fresno	CA	93720
Froedtert Hospital	9200 W. Wisconsin Avenue		Milwaukee	WI	53226
Frye Regional Medical Center	420 N. Center Street		Hickory	NC	28601
Gadsden Regional Medical Center	1007 Goodyear Avenue		Gadsden	AL	35903
Galichia Heart Hospital	2610 N. Woodlawn Boulevard		Wichita	KS	67220
Garden City Hospital	6245 Inkster Road		Garden City	MI	48135
Garden Grove Hospital	12601 Garden Grove Boulevard		Garden Grove	CA	92843
Gaston Memorial Hospital	2525 Court Drive		Gastonia	NC	28054

Gateway Medical CenterGateway Health System	651 Dunlap Lane		Clarksville	TN	37043
Gateway Regional Medical Center	2100 Madison Avenue		Granite City	IL	62040
Geisinger Medical Center	100 North Academy Avenue		Danville	PA	17822-2160
Geisinger Wyoming Valley Medical Center	100 North Academy Avenue		Danville	PA	17822-2160
Genesis Medical Center	1236 East Rusholme Street	Suite 190	Davenport	IA	52803-2459
Genesis Medical Center, Illini Campus	801 Illini Drive		Silvis	IL	61282
Genesys Regional Medical Center	One Genesys Parkway		Grand Blanc	MI	48439
Georgetown University Hospital	3800 Reservoir Road NW		Washington	DC	20007
Gerald Champion Reginal Medical	2669 North Scenic Drive		Alamogordo	NM	88310
Glenbrook Hospital	2100 Pfingsten Road		Evanston	IL	60026
Glendale Adventist Medical Center	1509 Wilson Terrace		Glendale	CA	91206
Glendale Memorial Hospital and Health Center	1420 S. Central Avenue		Glendale	CA	91204
Glens Falls Hospital	100 Park Street		Glens Falls	NY	12801
Glenwood Regional Medical Center	503 McMillan Road		West Monroe	LA	71291

Good Samaritan Heart Center	520 South 7th Street		Vincennes	IN	47591
Good Samaritan Hospital and Health Center	2222 Philadelphia Drive		Dayton	OH	45406
Good Samaritan Hospital	2425 Samaritan Drive	2425 Samaritan Drive	San Jose	CA	95124
Good Samaritan Hospital	605 N. 12th Street		Mount Vernon	IL	62864
Good Samaritan Hospital	3815 Highland Avenue		Downers Grove	IL	60515
Good Samaritan Hospital	375 Dixmyth Avenue		Cincinnati	OH	45220-2489
Good Samaritan Hospital	1225 Wilshire Boulevard		Los Angelos	CA	90017
Good Samaritan Hospital	10 East 31st Street		Kearney	NE	68848
Good Samaritan Hospital	255 Lafayette Avenue		Suffern	NY	10901
Good Samaritan Hospital Cardiology	1000 Montauk Highway		West Islip	NY	11795
Good Samaritan Hospital of Maryland	5601 Loch Raven Boulevard		Baltimore	MD	21239
Good Samaritan Medical Center	1309 North Flagler Drive		West Palm Beach	FL	33401
Good Samaritan Regional Medical Center	3600 NW Samaritan Drive		Corvallis	OR	97330

Good Shepherd Medical Center	700 East Marshall Avenue		Longview	TX	75601
Goshen General Hospital	200 High Park Avenue		Goshen	IN	46526
Governor Juan F. Luis Hospital & Medical Center	4007 Estate Diamond Ruby		Christiansted	VI	00820
Graduate Hospital	1800 Lombard Street		Philadelphia	PA	19146
Grady Health System	80 Jessie Hill Jr. Drive SE		Atlanta	GA	30303
Grady Memorial Hospital	561 West Central Avenue		Delaware	OH	43015-1489
Grand Strand Regional Medical Center	809 82nd Parkway		Myrtle Beach	SC	29572
Grandview Medical Center	405 Grand Avenue		Dayton	OH	45405
Grant Medical Center	111 S. Grant Avenue		Columbus	OH	43215
Gratiot Medical Center	4401 Campus Ridge Drive		Midland	MI	48670
Great Plains Regional Medical Center	Box 2339		Elk City	OK	73648
Greater Baltimore Medical Center	GBMC – Cardiac Cath Lab	6701 N. Charles Street	Towson	MD	21204
Greene Memorial Hospital	1141 N. Monroe Drive		Xenia	OH	45385

Greenview Regional Hospital	1801 Ashley Circle		Bowling Green	KY	42104
Greenville Memorial Hospital	701 Grove Road		Greenville	SC	29605
Greenwich Hospital	5 Perryridge Road		Greenwich	CT	06830
Gulf Coast Medical Center	449 W. 23rd Street		Panama City	FL	32406-5309
Gulf Coast Medical Center	1400 Highway 59		Wharton	TX	77488
Gulf Coast Medical Center (formerly Southwest Regional)	636 Del Prado Boulevard Suite 104		Cape Coral	FL	33990
Gundersen Lutheran Medical Center, Inc.	1900 South Avenue	H06-004	LaCrosse	WI	54601
Gwinnett Hospital System	1000 Medical Center Boulevard		Lawrenceville	GA	30045
Hackensack University Medical Center	30 Prospect Avenue		Hackensack	NJ	07601
Hahnemann University Hospital	230 N. Broad Street		Philadelphia	PA	19102
Halifax Medical Center	303 N. Clyde Morris Boulevard		Daytona Beach	FL	32114-2732
Halifax Regional Hospital	2204 Wilborn Avenue		South Boston	VA	24592
Hamilton Medical Center	1200 Memorial Drive		Dalton	GA	30720
Hamot Medical Center	201 State Street		Erie	PA	16550

Hannibal Regional Hospital	6000 Hospital Drive		Hannibal	MO	63401
Harbor Hospital Center	3001 S. Hanover Street		Baltimore	MD	21225
Hardin Memorial Hospital	913 N Dixie Avenue		Elizabethtown	KY	42701
Harlingen Medical Center	5501 South Expressway 77		Harlingen	TX	78550
Harper University Hospital	3990 John R. Street		Detroit	MI	48201
Harris Methodist Fort Worth	1301 Pennsylvania Avenue		Fort Worth	TX	76104
Harris Methodist HEB	1600 Hospital Parkway		Bedford	TX	76022
Harrison Medical Center	2520 Cherry Avenue		Bremerton	WA	98310
Hartford Hospital	80 Seymour Street		Hartford	CT	06102-8000
Harton Regional Medical Center	1801 N. Jackson Street		Tullahoma	TN	37388
Havasu Regional Medical Center	101 Civic Center Lane		Lake Havasu City	AZ	86403
Hawaii Medical Center East, LLC	2230 Liliha Street		Honolulu	HI	96817
Hawaii Medical Center West	91-2141 Fort Weaver Road		Ewa Beach	HI	96706
Hays Medical Center	2220 Canterbury Road		Hays	KS	67601
Hazard ARH Regional Medical Center	100 Medical Center Drive		Hazard	KY	41701

Health Care Authority for Baptist Health	2105 East South Boulevard		Montgomery	AL	36116
Heart and Lung Clinic	900 East Broadway Box 5510		Bismarck	ND	58502
Heart Center of Indiana	8333 Nabb Road Suite 330	Suite 330	Indianapolis	IN	46290
Heart Hospital of Austin	3801 N. Lamar Boulevard		Austin	TX	78756
Heart Hospital of Lafayette	1105 Kaliste Saloom Road		Lafayette	LA	70508
Heart Hospital of New Mexico	504 Elm Street NE		Albuqerque	NM	87102
Heart of Florida Regional Medical Center	40100 Highway 27		Davenport	FL	33837
Heart of Lancaster Regional Medical Center	250 College Avenue		Lancaster	PA	17604
Heartland Regional Medical Center	3333 W. Deyoung Street		Marion	IL	62959
Heartland Regional Medical Center	The Heart Center – Cardiac Cath Lab	5325 Faraon Street	Saint Joseph	MO	64506-3373
Helen Ellis Memorial	1395 South Pinella Avenue		Tarpon Springs	FL	34689
Hellen Keller Hospital	1300 South Montgomery Avenue		Sheffield	AL	35660
Hemet Valley Medical Center	1117 E. Devonshire Avenue		Hemet	CA	92543
Hendersonville Medical Center	355 New Shackle Island Road		Hendersonville	TN	37075

Hendrick Medical Center	1900 Pine Street		Abilene	TX	79601
Hennepin County Medical Center	701 Park Avenue		Minneapolis	MN	55415-1829
Henrico Doctors Hospital	1602 Skipwith Road	Cardiac Cath Lab	Richmond	VA	23229
Henry Ford Hospital	2799 W. Grand Boulevard	K-14	Detroit	MI	48202
Henry Ford Macomb	15855 Nineteen Mile Road		Clinton Township	MI	48038
Henry Ford Macomb-Warren	13355 East Ten Mile Road		Warren	MI	48089
Henry Mayo Newhall Memorial Hospital	23845 McBean Parkway		Valencia	CA	91350
Henry Medical Center, Inc.	1133 Eagles Landing Parkway		Stockbridge	GA	30281
Hialeah Hospital	651 East 25th Street		Hialeah	FL	33013
High Point Regional Hospital	601 N. Elm Street		High Point	NC	27261
Highland Park Hospital	718 Glenview Avenue		Highland Park	IL	60035
Hillcrest Baptist Medical Center	3000 Herring Avenue		Waco	TX	76708
Hillcrest Hospital	6780 Mayfield Road		Mayfield Heights	OH	44124
Hillcrest Medical Center	1120 S. Utica Avenue	3 West	Tulsa	OK	74104
Hilton Head Regional Medical Center	25 Hospital Center Boulevard		Hilton Head	SC	29925

HMA-Physician Management Region 25 Disb. Acct. (Physician's Regional)	6101 Pine Ridge Road		Naples	FL	34119
Hoag Memorial Hospital Presbyterian	One Hoag Drive		Newport Beach	CA	92658
Holland Community Hospital	602 Michigan Avenue		Holland	MI	49423
Hollywood Medical Center	3600 Washington Street		Hollywood	FL	33021
Holmes Regional Medical Center	1355 South Hickory Street Suite 203		Melbourne	FL	32901
Holy Cross Hospital	4725 N. Federal Highway		FT. Lauderdale	FL	33308
Holy Cross Hospital	2701 W. 68th Street		Chicago	IL	60629
Holy Cross Hospital Medical Library	1500 Forest Glen Road		Silver Spring	MD	20910
Holy Spirit Health System	503 N 21st Street	Heart Center Admin.	Camp Hill	PA	17011-2204
Holzer Cardiovascular Institute	90 Jackson Pike		Gallipolis	OH	45631
Hopkins County Memorial Hospital	115 Airport Road		Sulphur Springs	TX	75482
Hospital Auxilio Mutuo de Puerto Rico	PO Box 191277		San Juan	PR	00919-1227
Hospital of St. Raphael	Cardiac Cath Lab, 1450 Chapel Street		New Haven	CT	06511

Hospital of the University of Pennsylvania	9011 E. Gates 3400 Spruce Street		Philadelphia	PA	19104
Houston Northwest Medical Center Accounts Payable	710 FM 1960 Road West		Houston	TX	77090
Howard County General Hospital	5755 Cedar Lane		Columbia	MD	21044
Howard Regional Health System	3500 South LaFountain Street		Kokomo	IN	46904-9011
Howard University Hospital	2041 Georgia Avenue		Washington	DC	20060
Huguley Memorial Medical Center	11801 South Freeway		Ft. Worth	TX	76115
Huntington Hospital	100 W. California Boulevard		Pasadena	CA	91109
Huntington Hospital	270 Park Avenue		Huntington	NY	11743
Huntsville Hospital	101 Sivley Road		Huntsville	AL	35801
Iberia Medical Center	2315 East Main Street		New Iberia	LA	70560
Immanuel-St. Joseph's Hospital	1025 Marsh Street		Mankato	MN	56001
Indian River Medical Center	1000 36th Street		Vero Beach	FL	32960
Indiana Heart Institute	8333 Naab Rd	Suite 330	Indianapolis	IN	46260
Indiana Regional Medical Center Cardiology Department	835 Hospital Road		Indiana	PA	15701
Ingalls Hospital	One Ingalls Drive		Harvey	IL	60426

Ingham Regional Medical Center	401 W. Greenlawn Avenue		Lansing	MI	48910
Innovis Health	3000 32nd Avenue SW		Fargo	ND	58104
Inova Alexandria Hospital	3289 Woodburn Road		Falls Church	VA	22042
Inova Fairfax Hospital/Inova Heart & Vascular Institute	3300 Gallows Road		Falls Church	VA	22042
Inova Loudoun Hospital	3289 Woodburn Road	Suite 235	Falls Church	VA	22042
Integris Baptist Medical Center	3433 NW 56th Street, Suite 805		Oklahoma City	OK	73112
Integris Health	600 S. Monroe Street		Enid	OK	73701
Integris Southwest Medical Center	4401 South Western Avenue		Oklahoma City	OK	73109
Interfaith Medical Center	1545 Atlantic Avenue		Brooklyn	NY	11213
Intermountain Medical Center	PO Box 577000		Murray	UT	84157-7000
Iowa Lutheran Hospital	700 E. University Avenue		Des Moines	IA	50316
Iowa Methodist Medical Center	700 E. University Avenue		Des Moines	IA	50316
Iredell Memorial Hospital	557 Brookdale Drive		Statesville	NC	28687

Iroquois Memorial Hospital	200 Fairman Avenue		Watseka	IL	60970
Jackson Hospital and Clinic	1725 Pine Street		Montgomery	AL	36106
Jackson Madison General Hospital	708 West Forrest Avenue		Jackson	TN	38301
Jackson Memorial Hospital	1611 N.W. 12th Avenue		Miami	FL	33136
Jacobi Medical Center	1400 Pelham Parkway		Bronx	NY	10461-1101
Jamaica Hospital Medical Center	8900 VanWyck Expressway		Jamaica	NY	11418
Jane Phillips Memorial Medical Center	3500 Frank Phillips Boulevard		Bartlesville	OK	74006
Jeanes Hospital	7600 Central Avenue		Philadelphia	PA	19111
Jeff Anderson Regional Medical Center	2124 14th Street		Meridian	MS	39301
Jefferson Memorial Hospital	PO BOX 350		Crystal City	MO	63019
Jefferson Regional Medical Center	1600 West 40th Avenue		Pine Bluff	AR	71603
Jefferson Regional Medical Center	PO Box 18119 565 Coal Valley Road		Pittsburgh	PA	15236-0119
Jennie Edmundson Memorial Hospital	933 E. Pierce Street		Council Bluffs	IA	51503
Jersey City Medical Center	355 Grand Street		Neptune	NJ	07307

Jersey Shore University Medical Center	1945 State Route 33		Neptune	NJ	07753
Jewish Hospital	4777 East Galbraith Road		Cincinnati	OH	45236
Jewish Hospital	200 Abraham Flexner Way		Louisville	KY	40202
JFK Medical Center	5631 Glencrest Boulevard		Tampa	FL	33625-1008
John C. Lincoln Hospital – Deer Valley	19829 N. 27th Ave.		Phoenix	AZ	85027-4002
John C. Lincoln Hospital – North Mountain	250 E. Dunlap Avenue		Phoenix	AZ	85020-2871
John F. Kennedy Memorial Hospital	47-111 Monroe Street		Indio	CA	92201
John Muir Medical Center – Concord Campus	1601 Ygnacio Valley Road		Walnut Creek	CA	94550
John Muir – Walnut Creek	1601 Ygnacio Valley Road		Walnut Creek	CA	94550
Johns Hopkins Bayview Medical Center	4940 Eastern Avenue		Baltimore	MD	21224
Johns Hopkins Hospital	600 N. Wolfe Street		Baltimore	MD	21287
Johnson City Medical Center Hosp	400 N State of Franklin		Johnson City	TN	37604

Jordan Valley Hospital	3580 W. 9000 S		West Jordan	UT	84088
Kadlec Medical Center	888 Swift Boulevard		Richland	WA	99352
Kaiser Foundation Hospital	1526 Edgemont Street		Los Angeles	CA	90027
Kaiser Foundation Hospital	6600 Bruceville Road		Sacramento	CA	95823
Kaiser Permanente – Moanalua Medical Center	3288 Moanalua Road		Honolulu	HI	96819
Kaiser Permanente – Panorama City	13652 Cantara Street		Panoram City	CA	91402
Kaiser Permanente – San Diego Medical Center	4647 Zion Avenue		San Diego	CA	92120
Kaiser Permanente Medical Center	2350 Geary Boulevard	1st Floor – CV Surgery	San Francisco	CA	94115
Kaiser Permanente Medical Center – Santa Clara	710 Lawrence Expressway	Department 212	Santa Clara	CA	95051
Kaiser Permanente Medical Center Health Sciences Library	9400 E. Rosecrans Avenue		Bellflower	CA	90706
Kaiser Sunnyside Medical Center	10180 SE Sunnyside Road		Clackamas	OR	97015
Kansas Heart Hospital	3601 N Webb Road		Wichita	KS	67226
Kansas Heart Hospital	3601 N Webb Road		Wichita	KS	67226

Kansas Medical Center	1124 West 21st Street		Andover	KS	67002
Kansas University Hospital Authority	3901 Rainbow Boulevard		Kansas City	KS	66160
Kapi'olani Medical Center Pali Momi	98-1079 Moanalua Road		Aiea	HI	96701
Katherine Shaw Bethea Hospital	403 E. First Street		Dixon	IL	61021
Kaweah Delta Hospital District	Kaweah Delta Hospital District	400 W. Mineral King Avenue	Visalia	CA	93291
Kendall Regional Medical Center	5631 Glencrest Boulevard		Tampa	FL	33625-1008
Kershaw County Medical Center	1315 Roberts Street		Camden	SC	29020
Kettering Medical Center	3535 Southern Boulevard		Kettering	OH	45429
Kingman Regional Medical Center	3269 Stockton Hill Road		Kingman	AZ	86401
Kings Daughters Hospital	1901 Southwest H.K. Dodgen Loop		Temple	TX	76502
Kings Daughters Medical Center	2201 Lexington Avenue		Ashland	KY	41101
Kingwood Medical Center	22999 Highway 59 N		Kingwood	TX	77339
Kishwaukee Community Hospital	One Kish Hospital Drive		Dekalb	IL	60115
Knox Community Hospital	1330 Coshocton Road		Mount Vernon	OH	43050

Kootenai Medical Center	2003 Lincoln Way		Coeur d' Alene	ID	83814
Kuakini Medical Center	347 North Kuakini Street		Honolulu	HI	96817
Lafayette General Medical Center	1214 Coolidge Avenue		Lafayette	LA	70505
LaGrange Memorial Hospital	120 North Oak Street		Hinsdale	IL	60521
Lahey Clinic	41 Mall Road		Burlington	MA	01805
Lake Charles Memorial Hospital	1701 Oak Park Boulevard		Lake Charles	LA	70601
Lake City Medical Center	340 NW Commerce Boulevard		Lake City	FL	32055
Lake Hospital System	36000 Euclid Avenue		Willoughby	OH	44094
Lake Pointe Medical Center	6800 Scenic Drive		Rowlett	TX	75088
Lake Regional Health System	54 Hospital Drive		Osage Beach	MO	65065
Lakeland Hospital	1234 Napier Avenue		Saint Joseph	MI	49085-2112
Lakeland Regional Medical Center	1324 Lakeland Hills Boulevard		Lakeland	FL	33804
Lakeside Hospital	6901 N. 72nd Street Suite 3300		Omaha	NE	68122
Lakeview Regional Medical Center	95 East Fairway Drive		Covington	LA	70433-7500
Lakeway Regional Hospital	726 McFarland Street		Morristown	TN	37814
Lakewood Hospital	14519 Detroit Avenue		Lakewood	OH	44107

Lakewood Ranch Medical Center	8330 Lakewood Ranch Boulevard		Bradenton	FL	34202
Lakewood Regional Medical Center	3700 East South Street		Lakewood	CA	90712
Lancaster Community Hosp	43830 North 10th Sreet West		Lancaster	CA	93534
Lancaster General Hospital	555 N. Duke Street PO Box 3555		Lancaster	PA	17604-3555
Lancaster Regional Medical Center	250 College Avenue		Lancaster	PA	17604
Landmark Medical Center	115 Cass Avenue		Woonsocket	RI	02895
Lane Regional Medical Center	6300 Main Street		Zachary	LA	70791
Lankenau Hospital	Suite 557 Lankenau MOB East	100 Lancaster Avenue	Wynnewood	PA	19096
La Porte Hospital	1007 Lincolnway		La Porte	IN	46352
Laredo Medical Center	1720 Bustamante Street		Laredo	TX	78044
Largo Medical Center	201 14th Street SW		Largo	FL	33770
Las Colinas Medical Center	6800 North MacArthur Boulevard		Irving	TX	75039
Las Palmas Medical Center	1801 N. Oregon Street		El Paso	TX	79902
Latrobe Hospital	One Mellon Way		Latrobe	PA	15601
Lawnwood Medical Center	1700 S. 23rd Street		Fort Pierce	FL	34950
Lawrence & Memorial Hospital	365 Montauk Avenue		New London	CT	06375

Lawrence Hospital	55 Palmer Avenue		Broxville	NY	10708-3491
Lee Memorial Health System-Cape Coral Hospital	276 Cleveland Avenue		Fort Myers	FL	33901
Lee Memorial Health System-Health Park Med Center	276 Cleveland Avenue		Fort Myers	FL	33901
Lee's Summit Medical Center	2100 SE Blue Parkway		Lee's Summit	MO	64063
Leesburg Regional Medical Center	600 East Dixie Avenue		Leesburg	FL	34748
Legacy Emanuel Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Legacy Good Samaritan Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Legacy Meridian Park Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Legacy Salmon Creek Hospital	1919 NW Lovejoy Street		Portland	OR	97209
Lehigh Regional Medical Center	1500 Lee Boulevard		Lehigh Acres	FL	33963
Lehigh Valley Hospital	1200 S. Cedar Crest Boulevard	Jaindl Pavilion 1st Floor	Allentown	PA	18103
Lehigh Valley Hospital – Muhlenberg	2545 Schoenersville Road	Invasive Cardiology 3rd Floor	Bethlehem	PA	18017-7330
Lenoir Memorial Hospital	100 Airport Road		Kinston	NC	28501

Lenox Hill Heart and Vascular Institute of New York	100 East 77th Street		New York	NY	10021
Lewis Gale Medical Center	1900 Electric Road		Salem	VA	24153
Lexington Medical Center	2720 Sunset Boulevard		West Columbia	SC	29169
Liberty Hospital	2525 Glenn Hendren Drive		Liberty	MO	64068
Licking Memorial Hospital	1320 W. Main Street		Newark	OH	43055
Lima Memorial Hospital	1001 Bellefontaine Avenue		Lima	OH	45804
Little Company of Mary Hospital	4101 Torrance Boulevard		Torrance	CA	90503
Little Company of Mary Hospital	2800 W. 95th Street		Evergreen Park	IL	60805
Logan General Hospital, LLC	20 Hospital Drive		Logan	WV	25601
Loma Linda University Medical Center	11234 Anderson Street Room 2431		Loma Linda	CA	92354
Long Beach Memorial Medical Center	2801 Atlantic Avenue		Long Beach	CA	90806
Long Island College Hospital	339 Hicks Street		Brooklyn	NY	11201
Long Island Jewish Medical Center	270-05 76th Avenue		New Hyde Park	NY	11040
Longmont United Hospital	1950 Moutain View Avenue		Longmont	CO	80501

Longview Regional Medical Center	PO Box 14000		Longview	TX	75607
Los Alamitos Medical Center	3751 Katella Avenue		Los Alamitos	CA	90720
Los Robles Hospital & Medical Center	215 W. Janss Road		Thousand Oaks	CA	91360-1899
Louisiana Medical Center and Heart Hospital	64030 Louisiana Highway 434		Lacombe	LA	70445
Lourdes Hospital	1530 Lone Oak Road		Paducah	KY	42003
Lowell General Hospital	295 Varnum Avenue		Lowell	MA	01854
Lower Bucks Hospital	501 Bath Road		Bristol	PA	19007
Lower Keys Medical Center	5900 College Road		Key West	FL	33040
Loyola University Medical Center	2160 S. First Avenue	Rm. 1318 Bldg. 104 Att: Mike	Maywood	IL	60153
LSU Bogalusa Medical Center	433 Plaza Street		Bogalusa	LA	70427
Lubbock Heart Hospital	4810 N. Loop 289		Lubbock	LA	79416
Lutheran Hospital of Indiana	7950 W. Jefferson Boulevard		Fort Wayne	IN	46804
Lutheran Medical Center	150 55th Street		Brooklyn	NY	11220
Lynchburg General Hospital	1901 Tate Springs Road	Cardiac Cath Lab	Lynchburg	VA	24501-1167
MacNeal Hospital	3249 S. Oak Park Avenue		Berwyn	IL	60402

Magnolia Regional Health Center	611 Alcorn Drive		Corinth	MS	38834
Maimonides Medical Center Division of Cardiology	4802 10th Avenue		Brooklyn	NY	11219
Maine Medical Center	22 Bramhall Street		Portland	ME	04102
Mainland Medical Center	6801 Emmett F. Lowry Expressway		Texas City	TX	77591
Manatee Memorial Hospital	206 Second Street East		Bradenton	FL	34208
Marian Medical Center	1400 East Church Street		Santa Maria	CA	93454
Maricopa Integrated Health System	2601 E. Roosevelt Street		Phoenix	AZ	85008
Marin General Hospital	250 Bon Air Road		Greenbrae	CA	94904
Marion General Hospital	441 N. Wabash Avenue		Marion	IN	46952
Marion General Hospital	1000 McKinley Park Drive		Marion	OH	43302-6397
Marquette General Hospital System	580 W. College Avenue		Marquette	MI	49855
Marshall University School of Medicine	420 West Magnetic Street		Huntington	WV	25701
Martha Jefferson Hospital	459 Locust Avenue		Charlottesville	VA	22902
Martin Memorial Medical Center	PO Box 9010		Stuart	FL	34995
Mary Black Hospital	1700 Skylyn Drive		Spatanburg	SC	29307

Mary Greeley Medical Center	1111 Duff Avenue		Ames	IA	50010
Mary Hitchcock Memorial Hospital	One Medical Center Drive		Lebanon	NH	03756
Mary Immaculate Hospital	5801 Bremo Road	Suite 310 N. Medical Office Building	Richmond	VA	23226
Mary Rutan Hospital	205 Palmer Avenue		Bellefontaine	OH	43311
Mary Washington Hospital	1001 Sam Perry Boulevard		Fredericksburg	VA	22401
Massachusetts General Hospital	55 Fruit Street		Boston	MA	02114
Mat-Su Regional Medical Center	2500 S. Woodworth Loop		Palmer	AR	99645
Maui Memorial Medical Center	221 Mahalani Street		Wailuku	HI	96793
Maury Regional Hospital	1224 Trotwood Avenue		Columbia	TN	38401
Mayo Clinic	4500 San Pablo Road		Jacksonville	FL	32216
Mayo Clinic Arizona	5777 E. Mayo Boulevard		Phoenix	AZ	85054
Mayo Clinic – St. Mary's Hospital	1216 2nd Street SW		Rochester	MN	55902
McAlester Regional Health Center	1 Clark Bass Boulevard		McAlester	OK	74501
McAllen Medical Center	301 W. Expressway 83		McAllen	TX	78503
MCG Health Inc.	1120 15th Street		Augusta	GA	30912

	BBR-8521				
McKay-Dee Hospital Center	4401 Harrison Boulevard		Ogden	UT	84405
McKee Medical Center	2000 Boise Avenue		Loveland	CO	80538
McLeod Regional Medical Center	555 E. Chaves Street		Florence	SC	29501
Mease Countryside Hospital	300 Pinellas Street	MS 73	Clearwater	FL	33756
Mease Dunedin Hospital	207 Jeffords Street MS 142		Clearwater	FL	33756
Med Central Mansfield	335 Glessner Avenue		Mansfield	OH	44903
Medcenter One	300 N. 7th Street		Bismarck	ND	58501
Medical Center at Bowling Green	250 Park Street		Bowling Green	KY	42101
Medical Center Hospital	500 W. 4th Street		Odessa	TX	79760
Medical Center of Arlington	3301 Matlock Road		Arlington	TX	76015
Medical Center of Aurora	1501 S. Potomac Street		Aurora	CO	80012
Medical Centerof Central Georgia	777 Hemlock Street HB 53		Macon	GA	31208
Medical Center of Lewisville	500 West Main Street		Lewisville	TX	75057
Medical Center of Louisiana at New Orleans	1541 Tulane Avenue Room #203 Butterworth Building		New Orleans	LA	70112

Medical Center of McKinney	4500 Medical Center Drive		McKinney	TX	75069
Medical Center of Plano	3901 W. 15th Street		Plano	TX	75075-7738
Medical Center of South Arkansas, LLC	700 West Grove Street		El Dorado	AR	71730
Medical Center of Southeastern Oklahoma	1800 University Boulevard		Durant	OK	74701
Medical Center of the Rockies	2500 Rocky Mountain Avenue		Loveland	CO	80538
Medical City Dallas Hospital	7777 Forest Lane		Dallas	TX	75230
Medical University of South Carolina	25 Countenay Drive		Charleston	SC	29425-2110
Memorial Health System	1400 E. Boulder Street		Colorado Springs	CO	80909-5599
Memorial Health University Medical Center	Cardiac Cath Lab Memorial Health University Medical Center	4700 Waters Avenue	Savannah	GA	31404
Memorial Hermann Hospital	6411 Fannin Street		Houston	TX	77030
Memorial Hermann HVI South West	7787 Southwest Freeway		Houston	TX	77074
Memorial Hermann Memorial City Hospital	921 Gessner Road		Houston	TX	77024
Memorial Hermann Northeast	18951 Memorial North		Humble	TX	77338

Memorial Hermann Northwest Hospital	1635 North Loop West		Houston	TX	77008
Memorial Hermann The Woodlands Hospital	9250 Pinecroft Drive		Spring	TX	77380
Memorial Hospital	800 West 9th Street		Jasper	IN	47546
Memorial Hospital	2525 Desales Avenue		Chattanooga	TN	37404-1102
Memorial Hospital at Gulfport	4500 13th Street	PO Box 1810	Gulfport	MS	39502
Memorial Hospital Carbondale	405 W. Jackson Street		Carbondale	IL	65902
Memorial Hospital Miramar	1901 SW 172 Avenue		Miramar	FL	33029
Memorial Hospital of Martinsville	320 Hospital Drive		Martinsville	VA	24112
Memorial Hospital of Rhode Island Brown University	111 Brewster Street		Pawtucket	RI	02860
Memorial Hospital of South Bend	615 N. Michigan Street		South Bend	IN	46601-1033
Memorial Hospital Pembroke/ South Broward Hospital	7800 Sheridan Street		Pembroke Pines	FL	33024
Memorial Hospital West/South Broward Hospital District	703 North Flamingo Road		Pembroke Pines	FL	33028
Memorial Hospital – Jacksonville	3625 University Boulevard South		Jacksonville	FL	32215

Memorial Hospitals Association	1700 Coffee Road		Modesto	CA	95355
Memorial Medical Center	701 N. First Street		Springfield	IL	62781
Memorial Medical Center	2450 S. Telshor Boulevard		Las Cruces	NM	88011
Memorial Medical Center	1086 Franklin Street		Johnstown	PA	15905-4398
Memorial Regional Hospital/South Broward Hospital	3501 Johnson Street		Hollywood	FL	33021
Memphis Hospital (Germantown Campus)	1265 Union Avenue		Memphis	TN	38104-3499
Memphis Hospital (North Campus)	1265 Union Avenue		Memphis	TN	38104-3499
Menifee Valley Medical Center	28400 McCell Boulevard		Sun City	CA	92585
Menorah Medical Center	5721 West 119th Street		Overland Park	KS	66209
Mercy Fitzgerald Hospital	1500 Lansdowne Avenue		Darby	PA	19023
Mercy General Health Partners	1500 E. Sherman Boulevard		Muskegon	MI	49444
Mercy General Hospital – Sacramento	3939 J Street	Suite 215	Sacramento	CA	95819
Mercy Gilbert Medical Center	3555 South Val Vista Drive	Attn.: Cardiac Cath Lab	Gilbert	AZ	85296

Mercy Health System of Northwestern Arkansas	2710 Rife Medical Lane		Rogers	AR	72756
Mercy Hospital	144 State Street		Portland	ME	04101
Mercy Hospital	2925 Chicago Avenue		Minneapolis	MN	55407
Mercy Hospital – Scranton	746 Jefferson Avenue		Scranton	PA	18501
Mercy Hospital & Medical Center	2525 South Michigan Avenue		Chicago	IL	60616-2477
Mercy Hospital Anderson	7500 State Road		Cincinnati	OH	45255
Mercy Hospital Attn.: Accounts Payable	3663 South Miami Avenue		Miami	FL	33133
Mercy Hospital of Buffalo	515 Abbott Road	Marion Building Suite 306	Buffalo	NY	14220
Mercy Hospital Attn: A/P	271 Carew Street PO Box 9012		Springfield	MA	01102
Mercy Iowa City	500 East Market Street		Iowa City	IA	52245
Mercy Medical Center	2700 Steward Parkway		Roseburg	OR	97470
Mercy Medical Center	801 5th Street		Sioux City	IA	51101
Mercy Medical Center	1111 6th Avenue		Des Moines	IA	51101
Mercy Medical Center	1320 Mercy Drive	Cardiology Management and Support	Canton	OH	44708

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Mercy Medical Center	301 St. Paul Place		Baltimore	MD	21202
Mercy Medical Center	2900 W. 9th Avenue	Suite 107	Oshkosh	WI	54904
Mercy Medical Center	701 10th Street SE		Cedar Rapids	IA	52403
Mercy Medical Center	1000 North Village Ave		Rockville Centre	NY	11571
Mercy Medical Center Merced	301 E. 13th Street		Merced	CA	95340
Mercy Medical Center Redding	2175 Rosaline Avenue	PO Box 496009	Redding	CA	96049-6009
Mercy Medical Center – North Iowa	1000 4th Street SW		Mason City	IA	50401
Mercy Memorial Health Center Sisters of Mercy	1011 14th Avenue NW		Ardmore	OK	73401
Mercy Regional Health Center	1823 College Avenue		Manhattah	KS	67218
Mercy Regional Medical Center	1010 Three Springs Boulevard		Durango	CO	81301
Mercy San Juan Hospital	3941 J Street	c/o Mercy General Hospital Administration	Sacramento	CA	95819
Mercy St. Vincent Medical Center	2213 Cherry Street		Toledo	OH	43608
MeritCare Hospital	801 Broadway North		Fargo	ND	58122

Meriter Hospital	202 South Park Street	10 Tower – Heart Center	Madison	WI	53715
Methodist Charlton Medical Center (Methodist Health System)	MHS Sam & Anne Kesner Heart Center	1441 N. Beckley Avenue	Dallas	TX	75203
Methodist Dallas Medical Center (Methodist Health System)	MHS Sam & Anne Kesner Heart Center	1441 N. Beckley Avenue	Dallas	TX	75203
Methodist Hospital	7700 Floyd Curl Drive		San Antonio	TX	78229
Methodist Hospital	6500 Excelsior Boulevard 2nd Floor HVC		St. Louis Park	MN	55426
Methodist Hospital of South CA	300 W Huntington Drive		Arcadia	CA	91007-3402
Methodist Lebonheur Health Care University Hospital (University Campus)	1265 Union Avenue		Memphis	TN	38104-3499
Methodist Mansfield Medical Center	MHS Sam & Anne Kesner Heart Center	1441 N. Beckley Avenue	Dallas	TX	75203
Methodist Medical Center	280 Fort Sanders Boulevard Building 4 Suite 218		Knoxville	TN	37922
Methodist Medical Center of Illinois	221 NE Glen Oak Avenue		Peoria	IL	61636
Methodist Medical Center of Oak Ridge	280 Fort Sanders West Boulevard	Building 4 Suite 218	Knoxville	TN	37922

Methodist Speciality and Transplant Hospital	7700 Floyd Curl Drive		San Antonio	TX	78229
Methodist Stone Oak Hospital	1139 E. Sonterra Boulevard		San Antonio	TX	78258
Methodist Sugar Land Hospital	16655 Southwest Freeway		Sugar Land	TX	77479
Methodist Willowbrook Hospital	18220 Tomball Parkway		Houston	TX	77070
Metro Health Hospital	5900 Byron Center Road		Wyoming	MI	49519
MetroHealth Medical Center	2500 MetroHealth Drive		Cleveland	OH	44109
Metroplex Hospital	2201 S. Clear Creek Road		Killeen	TN	76549
Metropolitan Methodist Hospital	1310 McCullough Avenue		San Antonio	TX	78212
MetroSouth Medical Center	12935 Gregory Street		Blue Island	IL	60406-2470
MetroWest Medical Center	115 Lincoln Street	Cardiac Cath Lab	Framingham	MA	01702-6327
Miami Valley Hospital	One Wyoming Street		Dayton	OH	45409
Michael Reese Hospital	2929 S. Ellis Avenue		Chicago	IL	60616
Middle Tennessee Medical Center	400 N. Highland Avenue		Murfreesboro	TN	37130
Midland Memorial Hospital	2200 W. Illinois Avenue c/o Heart Institute		Midland	TX	79701
Midlands Community Hospital	6901 N. 72nd Street		Omaha	NE	68122

MidMichigan Medical Center-Midland	4005 Orchard Drive		Midland	MI	48670
Midwest Regional Medical Center	2825 Parklawn Drive		Midwest City	OK	73110
Milford Regional Medical Center	14 Prospect Street		Milford	MA	01568
Millard Fillmore Hospital	3 Gates Circle	Room 4-EB-13	Buffalo	NY	14209
Millard Filmore Suburban	100 High Street		Buffalo	Ny	14203
Mills-Peninsula Hospital	1783 Elcamino Real		Burlingame	CA	94010
Miriam Hospital	164 Summit Avenue		Providence	RI	02906
Mission Hospital Regional Medical Center	27700 Medical Center Road		Mission Viejo	CA	92691-6426
Mission Hospitals, Inc.	509 Biltmore Avenue		Asheville	NC	28801-4690
Mission Regional Medical Center	900 S. Bryan Road		Mission	TX	78572
Mississippi Baptist Medical Center	1225 N State Street		Jackson	MS	39202-2097
Missouri Baptist Medical Center	3015 N. Ballas Road	3105 North Ballas Road	Saint Louis	MO	63131-2374
Moberly Regional Medical Center	1515 Union Avenue		Moberly	MO	65270
Mobile Infirmary Medical Center	5 Mobile Infirmary Circle		Mobile	AL	36607

Monongalia Genera; Hospital	1200 JD Anderson Drive		Morgantown	WV	26505
Monroe Hospital	4011 South Medical Park Boulevard		Bloomington	IN	47403
Montefiore Medical Center	111 East 210th Street		Bronx	NY	10467-2490
Montgomery General Hospital	18101 Prince Philip Drive		Olney	MD	20832
Morris Hospital	150 West High Street		Morris	IL	60450
Morristown Memorial Hospital	100 Madison Avenue		Morristown	NJ	07962
Morton Plant Hospital	300 Pinellas Street	MS 73	Clearwater	FL	33756
Morton Plant North Bay Hospital	6600 Madison Street		New Port Richey	FL	34652
Moses Cone Health System	1200 N. Elm Street		Greensboro	NC	27401
Mother Frances Hospital	800 E. Dawson Street		Tyler	TX	75701
Mount Auburn Hospital	330 Mount Auburn Street	South 2 – Administration	Cambridge	MA	02138
Mount Carmel East	6150 East Broad Street	Office EB 148	Columbus	OH	42313
Mount Carmel St. Ann's Hospital	6150 East Broad Street	Office EB 148	Columbus	OH	42313
Mount Carmel West	6150 East Broad Street	Office EB 148	Columbus	OH	42313
Mount Clemens Regional Medical Center	1000 Harrington Street		Mount Clemens	MI	48043-2992

Mount Sinai Medical Center	4300 Alton Road		Miami Beach	FL	33140
Mountain View Regional Center	4311 E. Lohman Avenue		Las Cruces	NM	88011
Mountain Vista Medical Center	1301 S. Crismon Road		Mesa	AZ	85209
Mountainview Hospital	3100 N. Tenaya Way		Las Vegas	NV	89128
Munroe Regional Medical Center	1500 SW 1st Avenue PO Box 6000		Ocala	FL	34478
Munson Medical Center	1105 Sixth Street		Traverse City	MI	49684-2386
Muskogee Regional Medical Center	300 Rockefeller Drive		Muskogee	OK	74401
Nacogdoches Medical Center	4920 NE Stallings Drive		Nacogdoches	TX	75965
Naples Community Hospital	350 7th Street South		Naples	FL	34102
Nashoba Valley Medical Center	200 Groton Road		Ayer	MA	01432
National Park Medical Center	1910 Malvern Avenue		Hot Springs	AR	71901
NEA Baptist Memorial Hospital	3024 Stadium Boulevard		Jonesboro	AR	72401
Nebraska Heart Hospital	7500 South 91st Street		Lincoln	NE	68526

Nebraska Methodist Hospital	8303 Dodge Street		Omaha	NE	68114
New Hanover Regional Medical Center	2131 S. 17th Street		Wilmington	NC	28402
New Milford Hospital	21 Elm Street		New Milford	CT	06776
New York Community Hospital	2525 Kings Highway		Brooklyn	NY	11229
New York Hospital Medical Center of Queens Health Education Library	5645 Main Street	Floor 1	Flushing	NY	11355
New York Methodist Hospital	506 6th Street Brooklyn		New York City	NY	11215
New York Presbyterian Hospital	6220West 168th Street	PH-2	New York City	NY	10032
Newark Beth Israel Medical Center	201 Lyons Avenue at Osborne Terrace		Newark	NJ	07112
Niagara Falls Memorial Medical Center	621 Tenth Street		Niagara Falls	NY	14302
Nicholas H. Noyes Memorial Hospital	111 Clara Barton Street		Dansville	NY	14437
NIX Healthcare System	414 Navarro Street		San Antonio	TX	78205
Norman Regional Health System	PO Box 1308		Norman	OK	73070-1308

North Austin Medical Center	5103 Hereford Way		Austin	TX	78727
North Bay Medical Center	1200 B. Gale Wilson Boulevard		Fairfield	CA	94533
North Broward Medical Center	201 E. Sample Road		Pompano Beach	FL	33064
North Carolina Baptist Hospital	Medical Center Boulevard		Winston-Salem	NC	27157
North Central Baptist Hospital	730 North Main Avenue	Suite 409	San Antonio	TX	78205
North Colorado Medical Center	1801 16th Street		Greeley	CO	80631
North Cypress Medical Center	21214 Northwest Freeway		Cypress	TX	77429
North Florida Regional Medical Center	6500 Newberry Road		Gainesville	FL	32605
North Hills Hospital	4401 Booth Calloway Road		North Richland Hills	TX	76180
North Kansas City Hospital	2800 Clay Edward Drive		North Kansas City	MO	64116
North Memorial Medical Center	3300 Oakdale Avenue, N		Robbinsdale	MN	55422
North Mississippi Medical Center	830 S. Gloster Street		Tupelo	MS	38801
North Oaks Medical Center	15790 Paul Vega MD Drive		Hammond	LA	70403
North Shore Medical Center	1100 NW 95th Street		Miami	FL	33150

North Shore Medical Center FMC Campus	5000 W. Oakland Park Boulevard		Ft. Lauderdale	FL	33313
North Shore Medical Center – Salem Hospital	81 Highland Avenue	Davenport 5	Salem	MA	01970
North Shore University Medical System Cardiology					
North Shore University Hospital	300 Community Drive		Manhasset	NY	11030
North Suburban Medical Center	9191 Grant Street		Denver	CO	80229
North Vista Hospital	1409 E. Lake Mead Boulevard		North Las vegas	NV	89030
Northeast Alabama Regional Medical Center	400 East 10th Street		Anniston	AL	36202
Northeast Baptist Hospital	730 N. Main Avenue	Suite 409	San Antonio	TX	78205
Northeast Georgia Medical Center	743 Spring Street		Gainesville	GA	30501
NorthEast Medical Center	920 Church Street North		Concord	NC	28025
Northeast Methodist Hospital	12412 Judson Road		San Antonio	TX	78233
Northeast Regional Medical Center	315 S. Osteopathy		Kirksville	MO	63501
Northern Illinois Medical Center	4201 Medical Center Drive		McHenry	IL	60050

Northern Michigan Regional Hospital	416 Connable Avenue		Petoskey	MI	49770
Northern Nevada Medical Center	2375 E. Prater Way		Sparks	NV	89434
Northlake Medical Center	1455 Montreal Road		Tucker	GA	30084
Northridge Hospital Medical Center	18300 Roscoe Avenue		Northridge	CA	91325
Northshore Regional Medical Center	100 Medical Center Drive		Slidell	LA	70461
Northside Hospital	1000 Johnson Ferry Road		Atlanta	GA	30342
Northside Hospital	6000 49th Street, N		Pinellas Park	FL	33709
Northside Hospital – Forsyth	1200 Northside Forsyth Drive		Cumming	GA	30041
Northwest Community Hospital	800 W. Central Road		Arlington Heights	IL	60005
Northwest Hospital	1550 North 115th Street		Seattle	WA	98113
Northwest Hospital Center	5401 Old Court Road		Randallstown	MD	21133
Northwest Medical Center	2801 N. State Road 7		Margate	FL	33063
Northwest Medical Center	Northwest Medical Center	6200 N. La Cholla Boulevard	Tucson	AZ	85741
Northwest Medical Center – Bentonville	3000 Medical Center Parkway		Bentonville	AR	72712
Northwest Arkansas Hospitals LLC, dba NMC	609 West Maple Street		Springdale	AR	72764

Northwest Mississippi Regional Medical Center	1970 Hospital Drive		Clarksdale	MS	38614
Northwestern Memorial Hospital	676 N. St. Clair Street, Suite 1700		Chicago	IL	60611
Norton Audubon	PO Box 35070		Louisville	KY	40232
Norton Hospital	PO Box 35070		Louisville	KY	40232
Norwalk Hospital	24 Stevens Street		Norwalk	CT	06856
NYU Medical Center	560 First Avenue		New York	NY	10016
Oak Hill Hospital	11375 Cortez Boulevard		Brooksville	FL	34613
Obici Hospital	2800 Godwin Boulevard		Suffolk	VA	23434
Ocala Regional Mecical Center	1431 SW First Avenue		Ocala	FL	34474
Ocean Springs Hospital	3109 Bienville Boulevard		Ocean Springs	MS	39564
Ochsner Medical Center – Baton Rouge	17000 Medical Center Drive		Baton Rouge	LA	70816
Ochsner Medical Center – West Bank	2500 Belle Chasse Highway		Gretna	LA	70056
Ochsner Medical Center – Kenner (Kenner Regional Medical Center)	180 West Esplanade Avenue		Kenner	LA	70065
Ochsner Medical Foundation	1514 Jefferson Highway		New Orleans	LA	70121
Oconee Regional Medical Center	812 N. Cobb Street		Milledgeville	GA	31061
O'Connor Hospital	2105 Forest Avenue		San Jose	CA	95128

Odessa Regional Hospital	520 East Sixth Street		Odessa	TX	79760
Ogden Regional Medical Center	5475 South 500 East		Ogden	UT	84403
Ohio Valley Medical Center	2000 Eoff Street		Wheeling	WV	26003
Oklahoma Heart Hospital	4050 W. Memorial Road		Oklahoma City	OK	73120
Oklahoma State University Medical Center	744 W. 9th Street		Tulsa	OK	74127
Olathe Medical Center	20333 W. 151st Street		Olathe	KS	66061-7211
Opelousas General Health System	539 E. Prudhomme Street		Opelousas	LA	70570
Orange Coast Memorial Medical Center	9920 Talbert Avenue		Fountain Valley	CA	92708
Orange Regional Medical Center	60 Prospect Avenue		Middletown	NY	10940
Oregon Health & Science University	3181 SW Sam Jackson Road		Portland	OR	97239
Orlando Regional Medical Center	1414 Kuhl Avenue		Orlando	FL	32806
Osceola Regional Medical Center	700 W. Oak Street		Kissimmee	FL	34745
OSF Saint Anthony Medical Center	5666 East State Street		Rockford	IL	61108
OSF Saint Joseph Medical Center	2200 E. Washington Street		Bloomington	IL	61701

OSF Saint Francis Medical Center	530 N.E. Glen Oak Avenue		Peoria	IL	61637
OU MEDICAL CENTER	700 NE 13th Street		Oklahoma City	OK	73104
Our Lady of Lourdes Medical Center	1600 Haddon Avenue		Camden	NJ	08103
Our Lady of Lourdes Regional Medical Center	611 Saint Landry Street PO Box 4027		Lafayette	LA	70506
Our Lady of The Lake Regional	5000 Hennessy Boulevard		Baton Rouge	LA	70808-4350
Our Lady of the Resurrection Medical Center	5645 W. Addison Street		Chicago	IL	60634
Overlake Hospital Medical Center	1035 116th Avenue NE		Bellevue	WA	98004
Overland Park Regional Medical Center/ Health Midwest	10500 Quivira Road		Overland Park	KS	66215
Owensboro Medical Health System	811 E. Parrish Avenue		Owensboro	KY	42303
Ozarks Medical Center	1100 Kentucky Avenue	PO Box 1100	West Plains	MO	65775
P and S Surgical Hospital	312 Grammont Street		Monroe	LA	71201

Palm Beach Gardens Medical Center	3360 Burns Road		Palm Beach Gardens	FL	33410
Palmetto General Hospital	2001 West 68th Street		Hialeah	FL	33016
Palmetto Health Heart Hospital	6 Richland Medical Park Drive	Suite 4525	Columbia	SC	29203
Palomar Medical Center	555 East Valley Parkway		Escondido	CA	92025
Palos Community Hospital	12251 S. 80th Avenue	Cardiovascular Services	Palos Heights	IL	60463-0930
Paoli Hospital	557 Lankenau MOB East	100 Lancaster Avenue	Wynnewood	PA	19096
Paradise Valley Hospital	3929 E. Bell Road		Phoenix	AZ	85032
Paradise Valley Hospital	2400 E. Fourth Street		National City	CA	91950
Paris Regional Medical Center	865 DeShong Drive		Paris	TX	75462
Park Plaza Hospital	1313 Hermann Drive		Houston	TX	77004
Parkland Health and Hospital Systems	5201Harry Hines Boulevard		Dallas	TX	75235
Parkridge Medical Center	2333 McCallie Avenue		Chattanooga	TN	37404
Parkview Hospital	2200 Randallia Drive		Fort Wayne	IN	46805
Parkview Medical Center	400 W. 16th Street		Pueblo	CO	81003
Parkway Regional Medical Center	160 NW 170th Street		North Miami	FL	33169

Parkwest Medical Center	9352 Parkwest Boulevard		Knoxville	TN	37923
Parma Community General Hospital	7007 Powers Boulevard		Parma	OH	44129
Parrish Medical Center	951 N. Washington Avenue		Titusville	FL	32796
Pasco Regional Medical Center	13000 100 Fort King Road		Dade City	FL	33525
PBI Regional Medical Center	350 Boulevard		Passaic	NJ	07055
Peace River Regional Medical	2500 Harbor Boulevard		Port Charlotte	FL	33952
Peninsula Regional Medical Center	100 East Carroll Street		Salisbury	MD	21801
Penn Presbyterian Medical Center	39th & Market Streets		Philadelphia	PA	19104
Penn State Hershey Medical Center	PO Box 850 H139		Hershey	PA	17033
Pennsylvania Hospital	800 Spruce Street		Philadelphia	PA	19107-6192
Penrose – St. Francis Health Services	2222 North Nevada, #3000		Colorado Springs	CO	80907
Phelps County Regional Medical Center	1000 W. 10th Street		Rolla	MO	65401
Phoebe Putney Memorial Hospital	417 Third Avenue		Albany	GA	31701
Phoenix Baptist Hospital	2000 W. Bethany Home Road		Phoenix	AZ	85015

Phoenixville Hospital	140 Nutt Road		Phoenixville	PA	19460-3906
Piedmont Hospital	95 Collier Road Suite 2075		Atlanta	GA	30309
Piedmont Medical Center	222 S. Herlong Avenue		Rock Hill	SC	29732
Pikesville Medical Center	911 Bypass Road		Pikesville	KY	41501
Pinnicle Health Invasive Cardiology	111 South Front Street		Harrisburg	PA	17101-2099
Pioneer Valley Hospital	3590 West 9000 South, Suite 315		West Jordan	UT	84088
Pitt County Memorial Hospital	2100 Statonsburg Road	PCMH Heart Center	Greenville	NC	27835
Plantation General Hospital	401 NW 42nd Avenue		Plantation	FL	33317
Plaza Medical Center of Fort Worth	900 Eighth Avenue		Fort Worth	TX	76104
Pocono Medical Center	206 East Brown Street		East Stroudsburg	PA	18301
Pomona Valley Hospital Med Center	1798 N. Garey Avenue		Pomona	CA	91768
Pontiac Osteopathic Hospital	50 N. Perry Street		Pontiac	MI	48342
Poplar Bluff Regional Medical Center	2620 N. Westwood Boulevard		Poplar Bluff	MO	63901
Port Huron Hospital	1221 Pine Grove Avenue		Port Huron	MI	48060
Porter Adventist Hospital	2525 S. Downing Street		Denver	CO	80210-5817

Porter Valparaiso Hospital Campus	814 Laporte Avenue		Valparaiso	IN	46383
Portneuf Medical Center	651 Memorial Drive		Pocatello	ID	83201
Portsmouth Regional Hospital	333 Borthwick Avenue		Portsmouth	NH	03801
Prairie Lakes Healthcare	401 9th Avenue		Watertown	SD	57201
Presbyterian Healthcare Services	PO Box 26666		Albuquerque	NM	87125
Presbyterian Hospital	200 Hawthorne Lane		Charlotte	NC	28233
Presbyterian Hospital – Denton	3000 I-35 N		Denton	TX	76201
Presbyterian Hospital – Dallas	Presbyterian Hospital	8200 Walnut Hill Lane	Dallas	TX	75231
Presbyterian Hospital – Plano	6200 West Parker Road		Plano	TX	75093-7914
Presbyterian Intercommunity Hospital	12401 Washington Boulevard		Whittier	CA	90602
Presbyterian/ St.Luke's Medical Center	1719 E. 19th Avenue		Denver	CO	80218-1235
Prince George's Hospital Center	3001 Hospital Drive		Cheverly	MD	20785
Princeton Baptist Medical Center	Princeton BMC, Nursing Administration 701 Princeton Avenue, SW		Birmingham	AL	35211-1399

Proctor Hospital	5409 N. Knoxville Avenue		Peoria	IL	61614
Promise Regional Medical Center Hutchinson	1701 E. 23rd Avenue		Hutchinson	KS	67501
Protestant Memorial Medical Center	4500 Memorial Drive		Belleville	IL	62226
Provena Covenant Medical Center	1400 West Park Street		Urbana	IL	61801-9901
Provena Mercy Medical Center	1325 North Highland Avenue		Aurora	IL	60506
Provena Saint Joseph Medical Center	333 North Madison Street		Joliet	IL	60435-6595
Provena Saint Marys Hospital	500 West Court Street		Kankakee	IL	60901
Provena St. Joseph Hospital	77 N. Airlite Street		Elgin	IL	60123
Providence Alaska Medical Center	3200 Providence Drive		Anchorage	AK	99508-4662
Providence Everett Medical Center	1321 Coby Avenue	PO Box 1147	Everett	WA	98206-1147
Providence Health Center	6901 Medical Parkway		Waco	TX	76712
Providence Holy Cross Medical Center	501 South Buena Vista Street		Burbank	CA	91505
Providence Hospital	6801 Airport Boulevard		Mobile	AL	36608
Providence Hospital	2435 Forest Drive		Columbia	SC	29204
Providence Medford Medical	1111 Crater Lake Avenue		Medford	OR	97504
Providence Medical	8929 Parallel Parkway		Kansas City	KS	66112-1689

Center					
Providence Memorial Hospital	2001 North Oregon Street		El Paso	TX	79902
Providence Park Hosptial	16001 W. Nine Mile Road		Novi	MI	48374
Providence Portland Medical Center	9205 SW Barnes Road	9205 South West. Barnes Road	Portland	OR	97225
Providence Saint Joseph Medical Center	501 South Buena Vista Street		Burbank	CA	91505
Providence Saint Vincent Medical Center	Regional Heart Data Services	9205 South West Barnes Road #33	Portland	OR	97225
Providence St. Peter Hospital	413 N. Lilly Road		Olympia	WA	98506
Providence Tarzana Medical Center	18321 Clark Street		Tarzana	CA	91356-3501
Putnam Hospital Center	670 Stoneleigh Avenue		Carmel	NY	10512
Queen of the Valley Medical Center	1000 Trancas Street		Napa	CA	94558
Queens Medical Center	1301 Punchbowl Street		Honolulu	HI	96813
Rancho Spring Medical Center	25500 Medical Center Drive		Murrieta	CA	92562
Rankin Medical Center	350 Crossgates Boulevard		Brandon	MS	39042

Rapid City Regional Hospital	353 Fairmont Boulevard		Rapid City	SD	57702
Rapides Regional Medical Center	211 4th Street Box 30101		Alexandria	LA	71301
Raulerson Hospital (HCA)	1796 Highway 441 North		Okeechobee	LA	34972
Redmond Regional Medical Center	501 Redmond Road		Rome	GA	30165
Reedsburg Area Medical Center	2000 N. Dewey Avenue		Reedsburg	WI	53959
Regents of the University of Michigan	300 N. Ingalls Street 7A10		Ann Arbor	MI	48109
Regional Hospital of Jackson	367 Hospital Boulevard		Jackson	TN	38305
Regional Medical Center	225 N. Jackson Avenue		San Jose	CA	95116
Regional Medical Center	3000 St. Matthews Road		Orangeburg	SC	29118
Regional Medical Center	900 Hospital Drive		Madisonville	KY	42431-1644
Regional Medical Center Bayonet Point	14000 Fivay Road		Hudson	FL	34667
Regions Hospital	640 Jackson Street	Mail Stop 11102-M	St. Paul	MN	55101
Reid Hospital & Healthcare Services	1401 Chester Boulevard		Richmond	IN	47374
Renown Regional Medical Center	1155 Mill Street	R 11	Reno	NV	89502

Research Medical Center	2316 East Meyer Boulevard	Cardiology Services	Kansas City	MO	64132
Reston Hospital Center	1850 Town Center Parkway		Reston	VA	20190
Resurrection Medical Center	7435 Talcott Avenue		Chicago	IL	60631
Rex Hospital	4420 Lake Boone Trail		Raleigh	NC	27607
Rhode Island Hospital	593 Eddy Street		Providence	RI	02903
Richardson Regional Medical Center	401 W. Campbell Road		Richardson	TX	75080
Richmond University Medical Center	355 Bard Avenue		Staten Island	NY	10310
Riddle Memorial Hospital	1068 W. Baltimore Pike		Media	PA	19063-5177
Rideout Memorial Hospital	726 4th Street		Maryville	CA	95901
Ridgecrest Regional Hospital	1081 N. China Lake Boulevard		Ridgecrest	CA	93555
Riley Hospital	1102 Constitution Avenue		Meridian	MS	39301
Rio Grande Regional Hospital	101 E. Ridge Road		McAllen	TX	78503
River Oaks Hospital	1030 River Oaks Drive		Flowood	MS	39232
River Park Hospital	1559 Sparta Road		McMinnville	TN	37110
River Region Medical Center	2100 Highway 61 North		Vicksburg	MS	39183
Riverside Community Hospital	4445 Magnolia Avenue		Riverside	CA	92501
Riverside Medical Center	350 N. Wall Street		Kankakee	IL	60901

Riverside Methodist Hospital	3535 Olentangy River Road		Columbus	OH	43214
Riverside Regional Medical Center	500 J Clyde Morris Boulevard		Newport News	VA	23601
Riverview Hospital	395 Westfield Road		Noblesville	IN	46060
Riverview Regional Medical Center	600 South Third Street	PO Box 268	Gadsden	AL	35901
Robert Packer Hospital	1 Guthrie Square		Gadsden	AL	18840
Robert Wood Johnson University Hospital	1 Robert Wood Johnson Place		New Brunswick	NJ	08901
Robinson Memorial Hospital	6847 N. Chestnut Street		Ravenna	OH	44266
Rochester General Hospital	1425 Portland Avenue		Rochester	NY	14621
Rockford Memorial Hospital	2400 North Rockton Avenue		Rockford	IL	61103
Rogue Valley Medical Cent	2825 E. Barnett Road	Performance Improvement Dept.	Medford	OR	97504
Roper Hospital	316 Calhoun Street		Charleston	SC	29401
Rose Medical Center	4567 E. 9th Avenue		Denver	CO	80220-3941
Round Rock Medical Center	2400 Round Rock Medical Center		Round Rock	TX	78681
Rush Hospital	1314 19th Avenue		Meridian	MS	39301
Rush University Medical Center	1653 West Congress Parkway		Chicago	IL	60612
Rush-Copley Medical Center	2000 Ogden Avenue		Alexander City	AL	60504

Attn: Health Science Library					
Russell Medical Center	3316 Highway 280 PO Box 939		Alexander City	AL	35011
Rutland Regional Medical Center	160 Allen Street		Rutland	VT	05701
Sacred Heart Hospital of Pensacola	5151 North 9th Avenue		Pensacola	FL	32504-8721
Sacred Heart Hospital Attn: A/P	900 W. Clairemont Avenue		Eau Claire	WI	54701
Sacred Heart Medical Center	770 E. 11th Avenue		Eugene	OR	97401
Sacred Heart Medical Center	101 W. Eighth Avenue		Spokane	WA	99204
Saddleback Memorial Medical Center	24451 Health Center Drive		Laguna Hills	CA	92653
Saint Agnes Medical Center	1303 E. Herndon Avenue		Fresno	CA	93720
Saint Anthony Medical Center	1201 S. Main Street		Crown Point	IN	46307
Saint Bernadine Medical Center	2101 N. Waterman Avenue	2101 N. Waterman Avenue	San Bernadino	CA	92404-4836
Saint Clare's Hospital	611 St. Joseph's Avenue		Marshfield	WI	54449
Saint Elizabeth Health Center	1044 Belmont Avenue		Youngstown	OH	44511
Saint Elizabeth Hospital	2700 W. 9th Avenue Suite 107		Oshkosh	WI	54904
Saint Elizabeth Medical Center-South	1 Medical Village Drive		Edgewood	KY	41017-3403

Saint Elizabeth Regional Medical Center	555 S. 70th Street		Lincoln	NE	68510-2462
Saint Elizabeth's Hospital	211 South 3rd Street		Belleville	IL	62220-1915
Saint Francis Hospital	2122 Manchester Expressway		Columbus	GA	31904
Saint Francis Hospital	5959 Park Avenue		Memphis	TN	38119
Saint Francis Hospital	6161 S. Yale Avenue		Tulsa	OK	74136
Saint Francis Hospital & Health Center	8111 S. Emerson Avenue		Indianapolis	IN	46237
Saint Francis Hospital & Medical Center	114 Woodland Street		Hartford	CT	06105
Saint Francis Hospital of Evanston	355 Ridge Avenue		Evanston	IL	60202
Saint John Hospital & Medical Center	22151 Moross Road	Professional Bldg #1, #126	Detroit	MI	48236-2148
Saint John Macomb-Oakland Hospital	11800 E. 12 Mile Road	Room # 2510	Warren	MI	48093
Saint Johns Mercy Medical Center	615 S. New Ballas Road		St. Louis	MO	63141
Saint Joseph – London	310 East 9th Street		London	KY	40741
Saint Joseph Hospital	2900 N. Lake Shore Drive		Chicago	IL	60657-6274
Saint Joseph Hospital	Saint Joseph Hospital & Medical Center	350 West Thomas Road	Phoenix	AZ	85013
Saint Joseph Hospital	1100 W. Steward Drive		Orange	CA	92868

Saint Joseph Hospital	2700 Dolbeer Street		Eureka	CA	95501
Saint Joseph Hospital	3001 W. Martin Luther King Boulevard		Tampa	FL	33607
Saint Joseph Hospital	2900 N. Lake Shore Drive		Chicago	IL	60657
Saint Joseph Regional Health Center	2801 Franciscan Street		Bryan	TX	77802-2544
Saint Joseph's Hospital	1824 Murdoch Avenue		Parkersburg	WV	26102-0327
Saint Josephs Hospital / Marshfield Clinic	611 St. Joseph Avenue		Marshfield	WI	54449-1832
Saint Joseph's Hospital of Atlanta	5665 Peachtree Dunwoody Road		Atlanta	GA	30342
Saint Josephs Regional Medical Center – SB	801 East LaSalle Avenue		South Bend	IN	46617
Saint Louis University Hospital	3635 Vista at Grand		Saint Louis	MO	63110
Saint Luke's East – Lee's Summit	100 NE Saint Luke's Boulevard		Lee's Summit	MO	64086
Saint Luke's Hospital	1026 A Avenue, North East		Cedar Rapids	IA	52406-3026
Saint Luke's Hospital	4401 Wornall Road (MAHI 5th Floor)		Kansas City	MO	64111
Saint Luke's Northland	Saint Luke's Hospital	4401 Wornall Road	Kansas City	MO	64111
Saint Luke's Hospital	232 S. Woods Mill Road		Chesterfield	MO	63017-3417
Saint Luke's Regional Medical Center	190 E. Bannock Street		Boise	ID	83712-6241

Saint Margaret Mercy	5454 Hohman Avenue		Hammond	IN	46320
Saint Mary Corwin Medical Center	1008 Minnequa Avenue		Pueblo	CO	81004-3798
Saint Mary Mercy Hospital	36475 West Five Mile Road		Livonia	MI	48154
Saint Mary's Hospital	56 Franklin Street		Waterbury	CT	06706
Saint Mary's Hospital and Regional Medical Center	2635 N. 7th Street		Grand Junction	CO	81501-8209
Saint Mary's Medical Center	2900 First Avenue		Huntington	WV	25702
Saint Mary's Medical Center	3700 Washington Avenue		Evansville	IN	47750
Saint Mary's Regional Medical Center	235 W. Sixth Street		Reno	NV	89503
Saint Peter's Hospital	315 South Manning Boulevard		Albany	NY	12208
Saint Rita's Medical Center	730 West Market Street		Lima	OH	45801-4602
Saint Rose Dominican – Siena Campus	3001 St. Rose Parkway		Henderson	NV	89052
Saint Thomas Health Care Services	4220 Harding Road		Nashville	TN	37236
Saint Vincent Health Center	252 West 25th Street		Erie	PA	16544
Saint Vincent Hospital	123 Summer Street	Suite 270	Worcester	MA	01608
Saint Vincent	170 W. 12th Street		New York	NY	10011

Hospital Manhattan					
Saint Vincent Medical Center/Health Center	2 St. Vincent Circle		Little Rock	AR	72205
Saint Vincent's Medical Center	2800 Main Street		Bridgeport	CT	06606
Salem Hospital (Regional Health Services)	665 Winter Street SE		Salem	OR	97301-3919
Salina Regional Health Center	400 S. Santa Fe Avenue		Salina	KS	67401
Salinas Valley Memorial Hospital	450 E. Romie Lane		Salinas	CA	93901-4098
Salt Lake Regional Medical Center	1050 E South Temple		Salt Lake City	UT	84102
San Antonio Community Hospital	999 San Bernardino Road		Upland	CA	91786
San Francisco Heart and Vascular Institute	1900 Sullivan Avenue		Daly City	CA	94015
San Jacinto Methodist Hospital	4401 Garth Road		Baytown	TX	77521
San Joaquin Community Hospital	2615 Eye Street		Bakersfield	CA	93301
San Joaquin General Hospital	500 W. Hospital Road		French Camp	CA	95231
San Juan Regional Medical Center	801 W. Maple Street		Farmington	NM	87401
San Ramon Regional Medical Center	6001 Norris Canyon Road		San Ramon	CA	94583
Sanford USD Medical Center	900 East 54th Street		Sioux Falls	SD	57104

Santa Barbara Cottage Hospital	PO Box 689		Santa Barbara	CA	93102-0689
Santa Rosa Memorial Hospital	1165 Montgomery Drive PO Box 522		Santa Rosa	CA	95402
Sarasota Memorial Hospital	1700 S. Tamiami Trail		Sarasota	FL	34239
Satilla Heart Center	410 Darling Avenue		Waycross	GA	31501
Savoy Medical Center	801 Poincianna Street		Mamou	LA	70554
Scott and White Hospital	2401 South 31st Street		Temple	TX	76508
Scottsdale Healthcare Osborn	7400 E. Osborn Road		Scottsdale	AZ	85260
Scottsdale Healthcare Shea	9003 E. Shea Boulevard – Administration		Scottsdale	AZ	85260
Scottsdale Healthcare Thompson Peak	7400 E. Osborn Road		Scottsdale	AZ	85251
Scripps Green Hospital – La Jolla	10666 North Torrey Pines Road		La Jolla	CA	92037
Scripps Memorial Hospital Encinitas	354 Santa Fe Drive		Encinitas	CA	92024
Scripps Memorial Hospital – La Jolla	9888 Genessee Avenue		La Jolla	CA	92037
Scripps Mercy Hospital – San Diego	4077 5th Avenue	MER 74	San Diego	CA	92103
Scripps Mercy Hospital – Chula Vista	435 H Street		Chula Vista	CA	91910
Sebastian River Medical Center	13695 US Highway 1		Sebastian	FL	32962

Self Regional Healthcare	1325 Spring Street		Greenwood	SC	29646
Sentara Norfolk General Hospital	600 Gresham Drive		Norfolk	VA	23507
Sentara Obici Hospital	2800 Goodwin Boulevard		Suffolk	VA	23434
Sentara Virginia Beach General Hospital	1060 First Colonial Road		Virginia Beach	VA	23454-0685
Sequoia Hospital	Whipple and Alameda Avenues	170 Alameda de Las Pulgas	Redwood City	CA	94062
Seton Medical Center	1201 W. 38th Street		Austin	TX	78705
Seton Medical Center Williamson	201 Seton Parkway		Round Rock	TX	78665
Shady Grove Adventist Hospital	9901 Medical Center Drive		Rockville	MD	20850
Shands at AGH	801 SW 2nd Avenue		Gainesville	FL	32601
Shands Jacksonville Medical Center	655 West 8th Street		Jacksonville	FL	32209
Sharon Regional Health System	740 E. State Street		Sharon	PA	16146
Sharp Chula Vista Medical Center	8695 Spectrum Center Court		San Diego	CA	92123
Sharp Grossmont	5555 Grossmont Center Drive		La Mesa	CA	91942
Sharp Memorial Hospital	7901 Frost Street		San Diego	CA	92123
Shasta Regional Medical Center	1100 Butte Street		Redding	CA	96001

Shawnee Mission Medical Center	9100 West 74th Street		Shawnee Mission	KS	66204-4004
Shelby Baptist Medical Center	1000 First Street North		Alabaster	AL	35007
Sherman Hospital	934 Center Street	Decision Support	Elgin	IL	60120
Shore Health System of Maryland	219 South Washington Street		Easton	MD	21601
Sierra Medical Center	1625 Medical Center Drive		El Paso	TX	79902
Sierra Providence East Medical Center	1625 Medical Center Drive		El Paso	TX	79902
Sierra Vista Regional Medical Center	1010 S. Murray Avenue		San Luis Obispo	CA	93405
Silver Cross Hospital	1200 Maple Road		Joliet	IL	60432
Simi Valley Hospital & Health Care Services	2975 North Sycamore Drive		Simi Valley	CA	93065
Sinai – Grace Hospital	6071 W. Outer Drive		Detroit	MI	48235
Sinai Hospital of Baltimore	2401 West Belvedere Avenue		Baltimore	MD	21215-5271
Singing River Hospital	3109 Bienville Boulevard		Ocean Springs	MS	39564
Sisters of Charity Hospital	2157 Main Street		Buffalo	NY	14120
Skaggs Community Health Center	PO Box 650		Branson	MO	65615-0650
Skagit Valley Hospital Cardiac Cath Lab	1415 E. Kincaid Street		Mt. Vernon	WA	98273

Skokie Hospital	9600 Gross Point Road	Cardiac Cath Lab	Skokie	IL	60076-1214
Sky Ridge Medical Center	10101 Ridgegate Parkway		Lone Tree	CO	80124
Skyline Medical Center/ HTI Memorial Hospital Corp.	3441 Dickerson Pike		Nashville	TN	37207
Somerset Hospital	225 South Center Avenue		Somerset	PA	15501-2088
South Baldwin Regional Medical Center	1613 N. McKenzie Street		Foley	AL	36535
South Bay Hospital	4016 Sun City Center Boulevard		Sun City Center	FL	33570
South Crest Hospital	8801 S. 101st Avenue E		Tulsa	OK	74133
South Fulton Medical Center	1170 Cleveland Avenue		East Point	GA	30344
South GA Medical Center	PO Box 1727		Valdosta	GA	31603-1727
South Lake Hospital	1099 Citrus Tower Boulevard		Clermont	FL	34711
South Miami Hospital	6200 SW 73rd Street		Miami	FL	33143
South Nassau Communities Hospital	One Healthy Way		Oceanside	NY	11572
South Shore Hospital	55 Fogg Road`		South Weymouth	MA	02190-2432
Southeast Alabama Medical Center	1108 Ross Clark Circle		Dothan	AL	36301
Southeast Baptist Hospital	730 North Main Avenue	Suite 409	San Antonio	TX	78205

Southeast Missouri Hospital	1701 Lacey Street		Cape Girardeau	MO	63701
Southern Hills Hospital	9300 West Sunset Road		Las Vegas	NV	89148
Southern Hills Medical Center	391 Wallace Road		Nashville	TN	37211
Southern New Hampshire Medical Center	8 Prospect Street		Nashua	NH	03060
Southern Ohio Medical Center	1805 27th Street		Portsmouth	OH	45662
Southern Regional Medical Center	11 Upper Riverdale Road SW		Riverdale	GA	30274
Southside Hospital	301 East Main Street		Bayshore	NY	11706
SouthView Hospital	1997 Miamisburg-Centerville Road		Dayton	OH	45459
Southwest General Health Center	18697 Bagley Road		Middleburg Heights	OH	44130-3417
Southwest General Hospital	7400 Barlite Boulevard		San Antonio	TX	78224
Southwest Medical Center	2810 Ambassador Caffrey Parkway		Lafayette	LA	70506
Southwest MS Regional Medical Center	303 Marion Avenue		McComb	MS	39648
Southwest Washington Medical Center	600 NE 92nd Avenue		Vancouver	WA	98664

Southwestern Medical Center	5602 SW Lee Boulevard		Lawton	OK	73505
Spalding Regional Medical Center	601 South 8th Street		Griffin	GA	30224
Sparks Regional Medical Center	1311 South I Street		Fort Smith	AR	72917-7006
Sparrow Health System	1215 East Michigan Avenue		Lansing	MI	48909-7980
Spartanburg Regional Medical Center	101 East Wood Street	Cardiac Cath Lab / 3rd Floor Heart Center	Spartanburg	SC	29303
Spectrum Health	100 Michigan Street NE	MC 037, Rm 3825A	Grand Rapids	MI	49503-2560
Spring Branch Medical Center	8850 Long Point Road		Houston	TX	77055
Spring Valley Hospital	5400 S. Rainbow Boulevard		Las Vegas	NV	89118
Springfield Regional Medical Center – High Street Campus	2615 E. High Street		Springfield	OH	45505
Springhill Memorial Hospital	3719 Dauphin Street		Mobile	AL	36608
Springs Memorial Hospital	800 West Meeting Street		Lancaster	SC	29720
SSM St. Joseph Health Center	300 First Capitol Drive		St. Charles	MO	63301
SSM St. Joseph Hospital of Kirkwood	525 Couch Avenue		Kirkwood	MO	63122
St. Anthony Central Hospital	4231 W. 16th Avenue		Denver	CO	80204-1335

St. Anthony North Hospital	4231 W. 16th Avenue		Denver	CO	80204
St. James Hospital and Health Centers	3800 West 203rd Street Suite 207		Olympia Fields	IL	60461
St. Joseph Hospital	700 Broadway		Fort Wayne	IN	46802
St. Joseph Hospital-Oakland	44405 Woodward Avenue		Pontiac	MI	48341-5023
St. Joseph Medical Center	1717 South J Street		Tacoma	WA	98405-4933
St. Josephs Hospital	69 W. Exchange Street		St Paul	MN	55102
St. Joseph Hospital Health Center	301 Prospect Avenue		Syracuse	NY	13203
St. Luke's Cornwall Hospital	70 DuBois Street		Newburgh	NY	12550
St. Mary's Health Care Systems	1230 Baxter Street		Athens	GA	30606
St. Mary's Hospital	400 North Pleasant		Centralia	IL	62801
St. Mary's Regional Medical Center	305 S. 5th Street		Enid	OK	73701
St. Agnes Hospital	900 Caton Avenue		Baltimore	MD	21229
St. Agnes Hospital	430 E. Division Street		Fond du lac	WI	54935
St. Alexius Medical Center	1555 Barrington Road		Hoffman Estates	IL	60194-1018
St. Alphonsus Regional Medical Center	1055 N. Curtis Road		Boise	ID	83706
St. Anthony Hospital	1000 N. Lee Avenue		Oklahoma City	OK	73102

St. Anthony Memorial Health Centers	301 N. Homer Street	Cath Lab	Michigan City	IN	46360
St. Anthony's Health Care	1200 7th Avenue North	MS 2019	St. Petersburg	FL	33705
St. Anthony's Medical Center	10010 Kennerly Road		St. Loius	MO	63128-2106
St. Barnabas Medical Center	94 Old Short Hills Road		Livingston	NJ	07039
St. Bernards Medical Center	225 E. Jackson Avenue		Jonesboro	AR	72401
St. Catherine Hospital East Chicago	1500 South Lake Park Avenue		Hobart	IN	46342
St. Catherine of Siena	50 Route 25A		Smithtown	NY	11787
St. Charles Hospital	200 Belle Terre Road		Port Jefferson	NY	11777
St. Charles Medical Center	2500 North East Neff Road		Bend	OR	97701-6015
St. Clair Hospital	St. Clair Hospital	1000 Bower Hill Road	Pittsburgh	PA	15243
St. Cloud Regional Medical Center	2906 17th Street		St. Cloud	FL	34769
St. David's Medical Center	919 East 32nd Street		Austin	TX	78765
St. David's South Austin Hospital	901 W. Ben White Boulevard		Austin	TX	78704
St. Dominic-Jackson Memorial Hospital	969 Lakeland Drive		Jackson	MS	39216
St. Edwards Mercy Medical Center	7301 Rogers Avenue		Ft. Smith	AR	72917-7000

St. Elizabeth Hospital Medical Center	1501 Hartford Street		Lafayette	IN	47904
St. Elizabeth Medical Center	2209 Genesee Street		Utica	NY	13501
St. Francis Health Center	1700 SW 7th Street		Topeka	KS	66605
St. Francis Hospital	One St. Francis Drive		Greenville	SC	29601
St. Francis Hospital	7th &. Clayton Streets		Wilmington	DE	19805
St. Francis Hospital	333 Laidley Street	PO Box 44 Culloden, WV 25510	Charleston	WV	25322
St. Francis Hospital	100 Port Washington Boulevard		Roslyn	NY	11576
St. Francis Medical Centerq	211 Saint Francis Drive		Cape Girardeau	MO	63703-5049
St. Francis Medical Center	3630 Imperial Highway		Lynwood	CA	90265
St. Francis Medical Center	309 Jackson Street		Monroe	LA	71201
St. Francis Medical Center	601 Hamilton Avenue		Trenton	NJ	08629
St. Francis North Hospital	309 Jackson Street		Monroe	LA	71201
St. Helena Hospital	10 Woodland Road		St. Helena	CA	94574
St. James Health Care	400 South Clark Street		Butte	MT	59701
St. John Medical Center	1923 S. Utica Avenue	Heart Institute Education/ Research	Tulsa	OK	74104

St. John Medical Center	1615 Delaware Street		Longview	WA	98632
St. John Providence Hospital	16001 W. Nine Mile Road		Southfield	MI	48075
St. John West Shore Hospital	29000 Center Ridge Road		Westlake	OH	44145
St. John's Hospital	800 E. Carpenter Street		Springfield	IL	62769
St. John's Hospital	1235 East Cherokee Street		Springfield	MO	65804
St. Johns Regional Medical Center	2727 McClelland Boulevard		Joplin	MO	64804
St. Johns Regional Medical Center	1600 N. Rose Avenue		Oxnard	CA	93030-3722
St. Joseph Hospital	172 Kinsley Street		Nashua	NH	03060
St. Joseph Hospital	360 Broadway		Bangor	ME	04401
St. Joseph Hospital	1 Saint Joseph Drive		Lexington	KY	40504
St. Joseph Hospital	2901 Squalicum Parkway		Bellingham	WA	98225
St. Joseph Medical Center	2200 E. Washington Street		Bloomington	IL	61701
St. Joseph Medical Center	12th & Walnut Streets		Reading	PA	19603
St. Joseph Medical Center	1401 St. Joseph Parkway		Houston	TX	77002
St. Joseph Medical Center	7601 Olser Drive		Towson	MD	21204
St. Joseph Mercy Hospital	5325 Elliot Drive		Ann Arbor	MI	48106

St. Joseph Reg. Medical Center	801 E. Lasalle Avenue		South Bend	IN	46617
St. Joseph Regional Medical Center	703 Main Street		Paterson	NJ	07503
St. Joseph's Hospital	11705 Mercy Boulevard		Savannah	GA	31419
St. Joseph's Hospital	350 N. Wilmot Road		Tucson	AZ	85711
St. Joseph's Medical Center	127 S. Broadway		Yonkers	NY	10701
St. Josephs Medical Center of Stockton	1805 North California Street Suite 303	Suite #303	Stockton	CA	95204
St. Josephs Mercy Health Center	300 Werner Drive		Hot Springs	AR	71913
St. Jude Medical Center	101 East Valencia Mesa		Fullerton	CA	92835
St. Luke Hospital East	85 N. Grand Avenue		Ft. Thomas	KY	41075
St. Luke Hospital West	7380 Turfway Road		Florence	KY	41042
St. Luke's Baptist Hospital	730 North Main Avenue	Suite 409	San Antonio	TX	78205
St. Luke's Community Medical Center (The Woodlands)	17200 St. Luke's Way		The Woodlands	TX	77384
St. Luke's Episcopal Hospital	3100 Main Street	MC5-313	Houston	TX	77030
St. Lukes Hospital	363 Highland Avenue		Falls River	MA	02720
St. Lukes Hospital	5901 Monclova Road		Maumee	OH	43537
St. Luke's Hospital	915 E. First Street		Duluth	MN	55805

St. Luke's Hospital & Health Network	801 Ostrum Street	St. Luke's Hospital & Health Network	Bethlehem	PA	18015
St. Luke's Hospital and Health Network (Allentown Campus)	801 Ostrum Street	St. Luke's Hospital & Health Network	Bethlehem	PA	18015
St. Luke's Medical Center	2901 West Oklahoma Avenue		Milwaukee	WI	53215-4330
St. Luke's Medical Center	1800 E. Van Buren Street		Phoenix	AZ	85006
St. Luke's Regional Medical Center	2720 Stone Park Boulevard		Sioux City	IA	51104
St. Luke's South Hospital	Saint Luke's Hospital	4401 Wornal Road	Kansas City	MO	64111
St. Luke's Sugar Land Hospital	3100 Main Street Suite 647D		Houston	TX	77002
St. Luke's-Roosevelt Hospital Center	1111 Amsterdam Avenue		New York City	NY	10025
St. Mark's Hospital/ Northern Utah Healthcare Corporation	1200 East 3900 South		Salt Lake City	UT	84124
St. Mary Hospital	1201 Langhorne Newton Road		Langhorne	PA	19047
St. Mary Medical Center	18300 Highway 18		Appple Valley	CA	92307
St. Mary Medical Center	1050 Linden Avenue		Long Beach	CA	90813-3321

St. Mary Medical Center	1500 South Lake Park Avenue		Hobart	ID	46342
St. Mary of Nazareth Hospital Center	2233 W. Division Street		Chicago	IL	60622
St. Mary's Health Center	6420 Clayton Road		St. Louis	MO	63117
St. Mary's Hospital	707 S. Mills Street		Madison	WI	53715-1849
St. Mary's Hospital (Passaic)	350 Boulevard		Passaic	NJ	07055
St. Mary's Medical Center	901 45th Street		West Palm Beach	FL	33407
St. Mary's Medical Center	450 Stanyan Street		San Francisco	CA	94117
St. Mary's Medical Center	900 E. Oak Hill Avenue		Knoxville	TN	37917
St. Mary's Medical Center	407 East Third Street		Duluth	MN	55805
St. Mary's of Michigan	800 S. Washington Avenue		Saginaw	MI	48601
St. Mary's Regional Medical Center	PO Box 291 Campus Avenue		Lewiston	ME	04243-0291
St. Michael's Medical Center	111 Central Avenue		Newark	NJ	07102
St. Patrick Hospital and Health Sciences Center	500 W. Broadway		Missoula	MT	59802
St. Rose Dominican – De Lima Campus	102 E. Lake Mead Boulevard		Henderson	NV	89052

St. Rose Dominican – San Martin	8280 W. Warm Springs Road		Las Vegas	NV	89113
St. Rose Hospital	27200 Calaroga Avenue		Hayward	CA	94539
St. Tammany Parish Hospital	1202 S. Tyler Street		Covington	LA	70433
St. Vincent Charity Hospital	2351 East 22nd Street		Cleveland	OH	44115
St. Vincent Healthcare	1233 N. 30th Street		Billings	MT	59101
St. Vincent Hospital	2660 10th Avenue South #738		Birmingham	AL	35205
St. Vincent Hospital	835 S. Van Buren Street		Green Bay	WI	54301
St. Vincent Medical Center	2131 W. 3rd Street		Los Angeles	CA	90703
St. Vincent's Medical Center	1800 Barrs Street		Jacksonville	FL	32204
St.Vincent's East	50 Medical Park East Drive		Birmingham	AL	35235-3499
Stamford Hospital Health Sciences Library	30 Shelbourne Road PO Box 9317		Stamford	CT	06904-9317
Stanford Hospital and Clinics	Falk Building 2nd Floor 300 Pasteur Drive		Stanford	CA	94305
Staten Island University Hospital	475 Seaview Avenue		Staten Island	NY	10305
Stone Crest Medical Center	200 Stonecrest Boulevard		Smyrna	TN	37167

Stony Brook University Medical Center	3 Technology Drive		East Setauket	NY	11733-4073
Stormont-Vail Regional Medical Center	929 SW Mulvane Street		Topeka	KS	66606
Straub Clinic & Hospital: Cath Lab	888 S. King Street		Honolulu	HI	96813
Stringfellow Memorial Hospital	301 East 18th Street		Anniston	AL	36202
Suburban Hospital	8600 Old Georgetown Road		Bethesda	MD	20814
Summerlin Hospital Medical Center	657 Town Center Drive		Las Vegas	NV	89144
Summit Healthcare Regional Medical Center	2200 East Show Low Lake Road		Show Low	AZ	85901
Summit Medical Center	East Main & South 20th Street		Van Buren	AZ	72956
Summit Medical Center	5655 Frist Boulevard		Hermitage	TN	37076
Sunrise Hospital and Medical Center	3186 S. Maryland Parkway		Las Vegas	NV	89109
Sutter Delta Medical Center	3901 Lone Tree Way		Antioch	CA	94509
Sutter Medical Center – Sacramento	3528 Eisenhower Drive		Sacramento	CA	95826
Sutter Medical Center of Santa Rosa	3325 Chanate Road		Santa Rosa	CA	95404

Sutter Roseville Medical Center	One Medical Plaza		Roseville	CA	95661
Swedish American Hospital	1401 E. State Street		Rockford	IL	61104
Swedish Covenant Hospital	5145 N. California Avenue		Chicago	IL	60625
Swedish Health Services	500 17th Avenue #A85C		Seattle	WA	98104
Swedish Medical Center	501 East Hampden Avenue		Englewood	CO	80113
T. J. Samson Community Hospital	1301 North Race Street		Glasgow	KY	42141
Tacoma General Hospital	315 Martin Luther King, Jr. Way		Tacoma	WA	98415
Tahlequah City Hospital	1400 East Downing Street		Tahlequah	OK	74465-1008
Tallahassee Memorial Hospital	1300 Miccosukee Road	Attn: Performance Improvement	Tallahassee	FL	32308
Tampa General Hospital	1 Tampa General Circle		Tampa	FL	33601-1289
Temple University Hospital	3401 North Broad Street	1 PP Cardiology	Philadelphia	PA	19140
Terre Haute Regional Hospital	3901 South 7th Street		Terre Haute	IN	47802
Terrebonne General Medical Center	8166 Main Street		Houma	LA	70360
Texoma Medical Center	8701 Broadway		Merrillville	IN	46410

TexSAn Heart Hospital	6700 IH-10 West		San Antonio	TX	78201-2009
The Christ Hospital	2139 Auburn Avenue		Cincinnati	OH	45219
The George Washington University Hospital	900 23rd Street, NW		Washington	DC	20037
The Good Samaritan Hospital	PO Box 1281	4th and Walnut Streets	Lebanon	PA	17042
The Heart Hospital at Deaconess Gateway, LLC	600 Mary Street		Evansville	IN	47747
The Heart Hospital Baylor Plano	1100 Allied Drive		Plano	TX	75093
The Heart Hospital of Northwest Texas	1501 S. Coulter Street	PO Box 1110	Amarillo	TX	79175
The Hospital at Westlake Medical Center	5656 Bee Caves Road M-302		Austin	TX	78746
The Hospital of West Central Connecticut	100 Grand Street PO Box 100		New Britain	CT	06050
The Indiana Heart Hospital	8075 North Shadeland Avenue		Indianapolis	IN	46250
The Medical Center (TMC)	1000 Dutch Ridge Road		Beaver	PA	15009
The Medical Center of Southeast Texas	2555 Jimmy Johnson Boulevard		Port Arthur	TX	77640

The Methodist DeBakey Heart Center	6565 Fannin Street		Houston	TX	77030
The Monroe Clinic	515 22nd Avenue		Monroe	WI	53566
The Mount Sinai Medical Center	The Mount Sinai Medical Center		New York	NY	10029
The Nebraska Medical Center	987551 Nebraska Medical Center		Omaha	NE	68198-7551
The Ohio State University Medical Center	410 W. 10th Avenue	142 Doan Hall	Columbus	OH	43210
The Reading Hospital and Medical Center	Sixth Avenue and Spruce Street		West Reading	PA	19611
The Surgery Center on Soncy	3501 Soncy Road Suite 118		Amarillo	TX	79119
The Toledo Hospital	2142 North Cove Boulevard	Jobst Tower Suite 200	Toledo	OH	43606
The Uniontown Hospital	500 West Berkeley Street		Uniontown	PA	15401
The Valley Hospital	223 North Van Dien Avenue		Ridgewood	NJ	07450
The Village Regional Hospital	600 East Dixie Avenue		Leesburg	FL	34748
The Washington Hospital	155 Wilson Avenue		Washington	PA	15301-3398
The Western Pennsylvania Hospital	4800 Friendship Avenue	CVI	Pittsburgh	PA	15224
Thomas Hospital	750 Morphy Avenue		Fairhope	AL	36532

Thomas Jefferson University Hospital	TJUH	111 S. 11th Street Gibbon Building	Philadelphia	PA	19107
Tift Regional Medical Center	PO Box 747	901 E. 18th Street	Tifton	GA	31794
Timpanogos Regional Hospital	750 W. 800 S.		Orem	UT	84057
Tobey Hospital	363 Highland Avenue		Fall River	MA	
Tomball Regional Hospital	605 Holderrieth Boulevard		Tomball	TX	77375
Torrance Memorial Medical Center	3330 Lomita Boulevard		Torrance	CA	90505
Tri-City Medical Center	3909 Waring Road		Oceanside	CA	92056
Trident Regional Medical Center	9330 Medical Plaza Drive		Charleston	SC	29406
Trinity Hospitals	PO Box 5020		Minot	ND	58702
Trinity Medical Center	Attn: CardioVascular Services	800 Montclair Road	Birmingham	AL	35213
Trinity Medical Center	2701 17th Street	3rd Floor	Rock Island	IL	61201
Trinity Medical Center	4343 Josey Lane		Carrollton	TX	75010
Trinity Medical Center West	4000 Johnson Road		Steubenville	OH	43952
Trinity Regional Medical Center	802 Kenyon Road		Fort Dodge	IA	50501
Trinity Regional Medical Center	2701 17th Street	3rd Floor	Rock Island	IL	61201

Truman Medical Centers	2301 Holmes Street		Kansas City	MO	64108
Tucson Heart Hospital	4888 North Stone Avenue		Tucson	AZ	85704
Tucson Medical Center	5301 E. Grant Road		Tucson	AZ	85712
Tufts Medical Center	750 Washington Street		Boston	MA	02111
Tulane Medical Center	1415 Tulane Avenue		New Orleans	LA	70112
Tuomey Healthcare System Tuomey Regional Medical Center	129 N. Washington Street		Sumter	SC	29150
UC San Diego Medical Center	200 W. Arbor Drive		San Diego	CA	92103
UMASS Memorial Medical Center	55 Lake Ave North		Worcester	MA	01655-0002
Union Hospital	1606 N. 7th Street		Terre Haute	IN	47804
Union Hospital	106 Bow Street		Elkton	MD	21921
Union Memorial Hospital	201 E. University Parkway		Baltimore	MD	21218-2891
United Health Services Hospitals/Wilson Regional Medical Center	33 – 57 Harrison Street	Decker 4 Lobby	Johnson City	NY	13790
United Hospital	333 N. Smith Avenue		St. Paul	MN	55102
United Hospital	PO Box 1680		Clarksburg	WV	53143

Center, Inc.					
United Hospital System	6308 8th Avenue		Kenosha	WI	53143
United Regional Healthcare System	1600 11th Street		Wichita Falls	TX	76301
Unity Health Center	1102 West MacArthur		Shawnee	OK	74804
Unity Hospital	550 Osbourne Road NE		Minneapolis	MN	55432
Unity Hospital	1555 Long Pond Road		Rochester	NY	14626
University Community Hospital	3100 East Fletcher Avenue		Tampa	FL	33613
University Community Hospital Carrollwood Campur	3100 East Fletcher Avenue		Tampa	FL	33613
University of Alabama Hospital	620 19th Street South		Birmingham	AL	35249
University Hospital	234 Goodman Street		Cincinnati	OH	45219
University Hospital	1350 Walton Way		Augusta	GA	30901
University Hospitals Bedford Medical Center	44 Blaine Avenue		Bedford	OH	44146
University Hospitals Case Medical Center	11100 Euclid Avenue		Cleveland	OH	44106
University Hospitals Geauga Medical Center	13207 Ravenna Road		Chardon	OH	44024
University Hospitals Richmond Medical Center	27100 Chardon Road		Richmond Heights	OH	44143
University Hospital	150 Bergen Street		Newark	NJ	07101

UMDNJ					
University Medical Center	1501 N. Campbell Avenue		Tucson	AZ	85724
University Medical Center	1411 Baddour Parkway		Lebanon	TN	37087
University Medical Center	602 Indiana Avenue		Lubbock	TX	79410
University Medical Center LSU	2390 W. Congress Street		Lafayette	IA	70506
University Medical Center of El Paso	4815 Alameda Avenue		El Paso	TX	79905
University Medical Center Southern Nevada	1800 W. Charleston Boulevard		Las Vegas	NV	89102
University of Arkansas Medical Sciences	4301 West Markham Street Suite 532		Little Rock	AR	72205
University of Califorina, Irvine Division of Cardiology	101 The City Drive		Orange	CA	92868
University of California (UCLA)	757 Westwood Boulevard Rm. 2412		Los Angeles	CA	90095
University Of California Davis Medical Center	2315 Stockton Boulevard Main Hospital, Rm 6312		Sacramento	CA	95817
University of California San Francisco	505 Parnassus Avenue L-523 Box 0210		San Francisco	CA	94143-0210

Medical Center					
University of Chicago Hospitals	5841 S. Maryland Avenue	University of Chicago Medical Center	Chicago	IL	60637
University of Colorado Hospital Authority	12401 E. 17th Avenue	Mailstop B-132	Aurora	CO	80045
University of CT Health Center/John Dempsey Hospital	263 Farmington Avenue		Farmington	CT	06030
University of Florida (Shands)College of Medicine	1600 SW Archer Road		Gainesville	FL	32610
University of Illinois Medical Center at Chicago	1740 W. Taylor Street	Bldg 949 Rm 2181	Chicago	IL	60610
University of Iowa Hospitals and Clinics	200 Hawkins Drive	UIHC UI Heart	Iowa City	IA	52242
University of Kentucky	800 Rose Street		Lexington	KY	40536
University of Louisville Hospital	530 S. Jackson Street		Loiusville	KY	40202
University of Maryland Medical Center Cardiology	22 S. Greene Street		Baltimore	MD	21201-1544
University of Miami	1400 NW 12th Street		Miami	FL	33136
University of Minnesota Medical Center Fairview	420 Delaware Street SE MMC 815		Minneapolis	MN	55455

University of Mississippi Medical Center	2500 N. State Street		Jackson	MS	39216
University of Missouri Hospital and Clinics	1 Hospital Drive C4003		Columbia	MO	65212
University of New Mexico Hospital	2211 Lomas Boulevard		Albuquerque	NM	87106
University of North Carolina Hospitals	UNC Hospitals	101 Manning Drive CB#7075	Chapel Hill	NC	27514
University of Rochester Medical Center	601 Elmwood Avenue		Rochester	NY	14642
University of South Alabama Cardiology Department	2451 Fillingim Street		Mobile	AL	36617
University of Tennessee Medical Center	1924 Alcoa Highway	Box 95	Knoxville	TN	37920-6999
University of Texas Health Science Center at Tyler	11937 US Highway 271		Tyler	TX	75728
University of Texas Medical Branch at Galveston	301 University Boulevard		Galveston	TX	77555-0294
University of Texas Southwestern-University Hospital	5323 Harry Hines Boulevard		Dallas	TX	75390-9013

University of Toledo Medical Center	3065 Arlington Avenue	DH2261	Toledo	OH	43614
University of Utah Hospitals and Clinics	50 North Medical Drive	4040b	Salt Lake City	UT	84132
University of Virginia Medical Center	2441 Barringer West Complex	PO Box 800134	Charlottesville	VA	22908-0679
University of Washington Medical Center	1959 NE Pacific Street		Seattle	WA	98195-6422
University of Wisconsin Hospital & Clinics	600 Highland Avenue MC 3204		Madison	WI	53792
University Physicians HealthCare	2800 E. Ajo Way		Tucson	AZ	85713
UPMC Mercy	1400 Locust Street		Pittsburgh	PA	15219
UPMC Passavant Hospital	9100 Babcock Boulevard		Pittsburgh	PA	15237
UPMC Presbyterian Hospital	461 Baum Road	2nd Floor	Pittsburgh	PA	15213
UPMC Shadyside Hospital	461 Baum Road	2nd Floor	Pittsburgh	PA	15213
Upper Chesapeake Medical Center, Inc.	500 Upper Chesapeake Drive		Bel Air	MD	21014
Upstate Medical University (SUNY)	750 East Adams Street		Syracuse	NY	13120
USC University Hospital	1500 San Pablo Street		Los Angeles	CA	90033
Utah Valley Regional Medical Center	1034 S. 500 W		Provo	UT	84605

Val Verde Regional Medical Center	801 Bedell Avenue		Del Rio	TX	78840
Valley Baptist Medical Center	2101 Pease Street		Harlingen	TX	78550
Valley Care Medical Center	1111 East Stanley Boulevard		Livermore	CA	94550
Valley Hospital Medical Center	620 Shadow Lane		Las Vegas	NV	89106
Valley Medical Center	400 South 43rd Street		Renton	WA	98058
Valley Presbyterian Hospital	15107 Vanowen Street		Van Nuys	CA	91405
Valley Regional Medical Center	Valley Regional Medical Center	100A East Alton Gloor Boulevard	Brownsville	TX	78526
Vanderbilt Heart Institute	1215 21st Avenue	MCE 5th floor	Nashville	TN	37232
Vassar Brothers Medical Center	45 Reade Place		Poughkeepsie	NY	12601
Vaughan Regional Medical Center	1015 Medical Center Parkway		Selma	AL	36701
VCU – Medical College of Virginia	PO Box 980036		Richmond	VA	23298
Venice Regional Medical Center	540 The Rialto		Venice	FL	34285
Verde Valley Medical Center	269 South Candy Lane		Cotttonwood	AZ	86326
Verdugo Hills Hospital	1812 Verdugo Boulevard		Glendale	CA	91208

Via Christi Wichita Health Network	929 N. St. Francis Street		Wichita	KS	67214
Ville Platte Medical Center	800 East Main Street		Ville Platte	LA	70586
Virginia Hospital Center	1701 N. George Mason Drive		Arlington	VA	22205-3698
Virginia Mason Medical Center	1100 Ninth Avenue	X3-CVL	Seattle	WA	98111
WakeMed Cary Hospital	3000 New Bern Avenue		Raleigh	NC	27610
WakeMed Raleigh Campus	3000 New Bern Avenue		Raleigh	NC	27610
Walker Regional Medical Center	3400 Highway 78 E		Jasper	AL	35501
Washington Adventist Hospital	7600 Carroll Avenue		Takoma Park	MD	20912
Washington County Hospital	251 East Antietam Street		Hagerstown	MD	21740
Washington Hospital	2000 Mowry Avenue		Fremont	CA	94538
Washington Hospital Center	110 Irving Street NW Rm 5A14		Washington	DC	20010
Washington Regional Medical Center	1125 N College Avenue		Fayetteville	AR	72703-1994
Waterbury Hospital	PO Box 2153		Waterbury	CT	06722-2153
Watsonville Community Hospital	75 Nielson Street		Watsonville	CA	75076
Waukesha Memorial Hospital	N-17 W24100 Riverwood Drive		Waukesha	WI	53188-1187
Wayne Memorial	PO Box 8001		Goldsboro	NC	27533

Hospital					
Weatherford Regional Medical Center	713 East Anderson Street		Weatherford	TX	76086
Weiss Memorial Hospital	4646 N. Marine Drive		Chicago	IL	60640
Wellmont Holston Valley Medical Center	130 W Ravine Road		Kingsport	TN	37660
Wellstar Cobb Hospital	677 Church Street		Marietta	GA	30066
Wellstar Kennestone Hospital	677 Church Street		Marietta	GA	30066
Wesley Medical Center	550 N. Hillside Street		Wichita	KS	67214
West Anaheim Medical Center	3033 West Orange Avenue		Anaheim	CA	92084
West Florida Hospital	8383 North Davis Highway		Pensacola	FL	32514
West Georgia Medical Center	1514 Vernon Road		LaGrange	GA	30240
West Hills Hospital	7300 Medical Center Drive		West Hills	CA	91307
West Houston Medical Center	12141Richmond Avenue		Houston	TX	77082
West Jefferson Medical Center	1101 Medical Center Boulevard		Marrero	LA	70072
West Penn Hospital Forbes Regional Campus	2570 Haymaker Road		Monroeville	PA	15146
West Suburban Medical Center	3 Erie Court		Oak Park	Il	60302
West Valley Hospital	13677 W. McDowell Road		Goodyear	AZ	85338

West Virginia University Hospitals, Inc.	PO Box 8003	Medical Center Drive	Morgantown	WV	26506-8003
Westchester County Medical Center	95 Grasslands Road Suite 114		Valhalla	NY	10595
Western Arizona Regional Medical Center	2735 Silver Creek Road		Bullhead City	AZ	86442
Western Baptist Hospital	2501 Kentucky Avenue		Paducah	KY	42003
Western Medical Center Santa Ana	1001 North Tustin Avenue		Santa Ana	CA	92705
Western Plains Medical Center	3001 Avenue A		Dodge City	KS	67801
Westside Regional Medical Center	8201 West Broward Boulevard		Plantation	FL	33324
Wheaton Franciscan Healthcare-All Saints, Inc.	WFHC Clinical Data Management and Analysis	5000 West Chambers, M229	Milwaukee	WI	53210
Wheaton Franciscan Healthcare-St. Francis, Inc.	WFHC Clinical Data Management and Analysis	5000 West Chambers, M229	Milwaukee	WI	53210
Wheaton Franciscan Healthcare-St. Joseph, Inc.	WFH Clinical Data Management and Analysis	5000 West Chambers, M229	Milwaukee	WI	53210
Wheaton Franciscan - The Wisconsin Heart Hospital Center	WFH Clinical Data Management and Analysis	5000 West Chambers, M229	Milwaukee	WI	53210
Wheeling Hospital	1 Medical Park		Wheeling	WV	26003

White County Medical Center	3214 E. Race Avenue		Searcy	AR	72143-4810
White Memorial Medical Center	1720 Cesar E. Chavez Avenue		Los Angeles	CA	90033
White Plains Hospital Center	41 E. Post Road		White Plains	NY	10601
White River Medical Center	1710 Harrison Street		Batesville	AR	72501
William Beaumont Hospital	54373 Samara Drive		Macomb	MI	48073-2213
William Beaumont Hospita – Troy	44201 Dequindre Road		Troy	MI	48085
William W. Backus Hospital	326 Washington Street		Norwich	CT	06360
Willis-Knighton Pierremont	2600 Greenwood Road		Shreveport	LA	71103
Willis-Knighton Medical Center	2600 Greenwood Road		Shreveport	LA	71103
Wilson Memorial Hospital	915 West Michigan Street		Sidney	OH	45365
Wilson N. Jones Medical Center	500 N Highland Avenue		Sherman	TX	75092
Winchester Medical Center Inc.	220 Campus Boulevard	Suite 313	Winchester	VA	22601
Winter Haven Hospital	20005 Avenue F Northeast		Winter Haven	FL	33881
Winthrop University Hospital	19600 E. 39th Street		Independence	MO	64057
Wise Regional Health System	609 Medical Center Drive		Decatur	TX	76234

Woman's Christian Association Hospital	207 Foote Avenue		Jamestown	NY	14701
Woodland Heights Medical Center	505 S. John Redditt Drive		Lufkin	TX	75904
Wooster Community Hospital	1761 Beall Avenue		Wooster	OH	44691
Wuesthoff Health System	110 Longwood Avenue		Rockledge	FL	32956-5002
Wyckoff Heights Medical Center	374 Stockholm Street	Division of Cardiology - 3rd Floor	Brooklyn	NY	11237
Wyoming Medical Center	1233 East 2nd Street		Casper	WY	82601-2988
Wyoming Valley Health Care System	575 North River Street		Wilkes-Barre	PA	18764
Yakima Regional Medical Center/Cardiac Center	110 S. 9th Avenue		Yakima	WA	98902
Yakima Valley Memorial Hospital	2811 Tieton Drive		Yakima	WA	98902
Yale New Haven Hospital	20 York Street		New Haven	CT	06510
Yavapai Regional Medical Center	1003 Willow Creek Road		Prescott	AZ	86301
York Hospital	15 Hospital Drive		York	ME	03909
York Hospital	1001 South George Street		York	PA	17405
Yuma Regional Medical Center	2400 S. Avenue A		Yuma	AZ	85364

Addendum X
Active CMS Coverage-Related Guidance Documents
[July Through September 2009]

On September 24, 2004, we published a notice in the **Federal Register** (69 FR 57325), in which we explained how we would develop coverage-related guidance documents. These guidance documents are required under section 731 of the MMA. In our notice, we committed to the public that, "At regular intervals, we will update a list of all guidance documents in the **Federal Register**."

Addendum X includes a list of active CMS guidance documents as of the ending date of the period covered by this notice. To obtain full-text copies of these documents, visit the CMS Coverage Web site at http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcd_1.

Document Name: Factors CMS Considers in Commissioning External Technology Assessments
Date of Issuance: April 11, 2006

Document Name: Factors CMS Considers in Opening a National Coverage Determination
Date of Issuance: April 11, 2006

Document Name: (Draft) Factors CMS Considers in Referring Topics to the Medicare Coverage Advisory Committee
Date of Issuance: March 9, 2005

Document Name: National Coverage Determinations with Data Collection as a Condition of Coverage: Coverage With Evidence Development
Date of Issuance: July 12, 2006

Addendum XI
List of Special One-Time Notices Regarding National Coverage Provisions
[July Through September 2009]

As medical technologies, the contexts under which they are delivered, and the health needs of Medicare beneficiaries grow increasingly complex, our national coverage determination (NCD) process must adapt to accommodate these complexities. As part of this adaptation, our national coverage decisions often include multi-faceted coverage determinations, which may place conditions on the patient populations eligible for coverage of a particular item or service, the providers who deliver a particular service, or the methods in which data are collected to supplement the delivery of the item or service (such as participation in a clinical trial).

We outline these conditions as we release new or revised NCDs. However, details surrounding these conditions may need to be shared with the public as "one-time notices" in the **Federal Register**. For example, we may require that a particular medical service may be delivered only in the context of a CMS-recognized clinical research study, which was not named in the NCD itself. We would then use Addendum XI of this notice, along with our coverage Web site at http://www.cms.hhs.gov/coverage, to provide the public with information about the clinical research study that it ultimately recognizes.

Addendum XI includes any additional information we may need to share about the conditions under which an NCD was issued as of the ending date of the period covered by this notice.

There were no Special One-Time Notices Regarding National Coverage

Provisions published this quarter.

Addendum XII-National Oncologic PET Registry (NOPR)

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the Registry. The following facilities have met the CMS's requirements for performing PET scans under National Coverage Determination CAG-00181N.

Facility Name	Provider Number	Date Approved	State	Other Information
Barnes-Jewish Hospital Barnes-Jewish Plaza Mailstop # 90-72-374 St. Louis, MO 63110	E40080o	03/07/2006	MO	
Duke University Medical Center PET Facility Room 0402 Duke So. Durham, NC 27710	34003	03/07/2006	NC	Yellow Zone Box 3949
VCU Health System-Molecular Imaging Center Dept of Nuclear Medicine - North Hospital 7th Floor Richmond, VA 23298	490032	03/07/2006	VA	1300 East Marshall-PO Box 980001
Acadiana Oncologic Imaging 2311 Kaliste Saloom Lafayette, LA 70508	5CA64	03/06/2006	LA	

Adler Institute for Advanced Imaging 261 Old York Road Suite 106 Jenkintown, PA 19046		03/07/2006	PA	
Advanced Medical Imaging San Saba 215 N San Saba Suite 107 San Antonio, TX 78207	00BC90	03/07/2006	TX	
Advanced Medical Imaging Stone Oak 540 Oak Centre Suite 100 San Antonio, TX 78258	00BC90	03/07/2006	TX	
Advanced Radiological PET Imaging, PC 2334 30th Avenue Astoria, NY 11102	05677	03/07/2006	NY	Lower Level
Akron Regional PET Scan, LLC 3009 Smith Road Suite 350 Akron, OH 44333	AKID01691	03/07/2006	OH	
American Radiology Services-Owings Mills 21 Crossroads Drive, Suite 100 Owings Mills, MD 21117	434L	03/07/2006	MD	

American Radiology Services-Bethesda 6430 Rockledge Drive, Suite 100 Bethesda, MD 20817	G00000	03/07/2006	MD	
American Radiology Services-Waldorf 3510 Old Washington Road Suite 101 Waldorf, MD 20602	435L	03/07/2006	MD	
American Radiology Services-Columbia 8820 Columbia Parkway 100 Columbia, MD 21045	434L	03/07/2006	MD	
American Radiology Services-Frederick 141 Thomas Johnson Drive Suite 170 Frederick, MD 21702	435L	03/07/2006	MD	
American Radiology Services-Timonium 2080 York Road Suite 160 Timonium, MD 21093	434L	03/07/2006	MD	
Angel Williamson Imaging Center- Ft. Walton Beach 1013-D Mar-Walt Drive Ft. Walton Beach, FL 32547	39953A	03/07/2006	FL	

Angel Williamson Imaging Center-Pensacola 5120 Bayou Boulevard Suite 9 Pensacola, FL 32503	39953	03/07/2006	FL	
Edison Imaging Center 3900 Park Avenue Suite 107 Edison, NJ 08820	AS008835	03/07/2006	NJ	
Avon Medical Diagnostic Center 1480 Center Road Suite C Avon, OH 44011	MC4039571	03/07/2006	OH	
Baltimore Imaging Centers 3708 Mountain Road Pasadena, MD 21122	H476	03/07/2006	MD	
Baptist Hospital PET/CT 1000 West Moreno Street Pensacola, FL 32501	100093	03/07/2006	FL	
Bethesda Health City 2623 S Seacrest Boulevard Boynton Beach, FL 33435	40237	03/07/2006	FL	
PET/CT Imaging at White Marsh 9900 Franklin Square Drive Suite D Nottingham, MD 21236	FMNX01	03/07/2006	MD	
Biomedical Research Foundation PET Imaging Center 1505 Kings Highway Shreveport, LA 71103	5D914	03/07/2006	LA	

BodyScan of Louisville LLC 807 Shelbyville Road Suite 201 Louisville, KY 40222	9372701	03/07/2006	KY	
Bradley Regional PET Imaging Cleveland, TN 37311	3373976	03/07/2006	TN	2305 Chambliss Ave NW
PET Imaging Institute of NJ 1608 Rte 88 West Suite 302 Brick, NJ 08724	070684	03/07/2006	NJ	
Broward PET Imaging Center, LLC 4850 W. Oakland Park Boulevard Suite A Fort Lauderdale, FL 33313	E5709	03/07/2006	FL	
Camelback Imaging 15215 S. 48th Street, #110 Phoenix, AZ 85044	100488	03/07/2006	AZ	
California Imaging and Treatment Center 3000 Oak Road, #111 Walnut Creek, CA 95497	ZZZ27175Z	03/07/2006	CA	
Cancer Care Centers of Brevard 1430 S Pine Street Melbourne, FL 32901	39835	03/07/2006	FL	
Center for Medical Imaging-Florida Hospital. 1922 Salk Avenue Tavares, FL 32778	100057	03/07/2006	FL	

Cancer Center of Colorado Springs 320 E. Fontanero Suite 200 Colorado Springs, CO 80907	79804	03/07/2006	CO	
Centro Sononuclear de Rio Piedras 1028 Los Angeles Street. San Juan, PR 00926	83910	03/07/2006	PR	
Chattanooga Imaging East 1710 Gunbarrel Road Chattanooga, TN 37421	3716643	03/07/2006	TN	
Chester County PET Associates 701 East Chester Marshall Street West Chester, PA 19380	085698	03/07/2006	PA	
Cincinnati PET Scan, LLC-Kenwood 7730 Montgomery Road Suite 120 Cincinnati, OH 45236	311754291	03/07/2006	OH	
Cincinnati PET Scan, LLC Monfort Heights 5575 Cheviot Road Cincinnati, OH 45247	311754291	03/07/2006	OH	
Clinical PET of Hernando 4003 Mariner Boulevard Spring Hill, FL 34609	L13228	03/07/2006	FL	
Clinical PET of Citrus 6140 W Corporate Oaks Drive Crystal River, FL 34429	U0121	03/07/2006	FL	

Clinical PET of Lake City 484 SW Commerce Drive Suite 145 Lake City, FL 32025	V2683	03/07/2006	FL	
Clinical PET of Ocala 3143 SW 32nd Avenue, Suite 100 Ocala, FL 34474	E7179	03/07/2006	FL	
Columbus Regional Hospital 2400 East 17th Street Columbus, IN 47201	150112	03/07/2006	IN	
Concord Imaging 18802 Meisner Drive San Antonio, TX 78258	00126Z	03/07/2006	TX	
Dartmouth Hitchcock Medical Center One Medical Center Drive. Lebanon, NH 03756		03/07/2006	NH	
Dedicated PET Imaging 2315 Sunset Boulevard, Suite E Steubenville, OH 43952	01181	03/07/2006	OH	
Diablo Valley Oncology & Hematology Medical Group 3000 Oak Road, #111 Walnut Creek, CA 94597	ZZZ26796Z	03/07/2006	CA	
Diagnostic Imaging at Baywalk 129 1st Avenue N St. Petersburg, FL 33701	00022	03/07/2006	FL	
DMS Imaging 2101 N. University Drive Fargo, ND 58109		03/07/2006	ND	PO Box 8070

Doylestown PET Associates 599 W. State Street Doylestown, PA 18901	059536	03/07/2006	PA	Suite 202
East Bay Medical Oncology-Hematology Assoc., Inc 3000 Oak Road, #111 Walnut Creek, CA 94597	ZZZ267792	03/07/2006	CA	
East River Medical Imaging 519 East 72 Street Suite 103 New York, NY 10021	W11781	03/07/2006	NY	
El Camino Imaging Center 8020 Constitution Place NE Albequerque, NM 87110	237150	03/07/2006	NM	
Elite Imaging, LLC 2845 Aventura Boulevard Suite 145 Aventura, FL 33180	K3535	03/07/2006	FL	
EPIC Imaging Center 233 NE 102nd Avenue Portland, OR 97220	0000WCGNQ	03/07/2006	OR	
Evergreen Radia 11521 NE 128th Street Kirkland, WA 98034	GAB39931	03/07/2006	WA	
Excel Diagnostics Imaging Clinics 9701 Richmond Avenue Suite 122 Houston, TX 77042	FTA109	03/07/2006	TX	
First Imaging of the Carolinas 30 Memorial Drive Pinehurst, NC 29374	2346997	03/07/2006	NC	

Florida Hospital Advanced Nuclear Imaging PET 328 Spruce Street Orlando, FL 32804	100007	03/07/2006	FL	
Fort Jesse Imaging Center, LLC 2200 Fort Jesse Road Suite 120 Normal, IL 61761	209824	03/07/2006	IL	
Fox Chase Cancer Center 333 Cotman Avenue Philadelphia, PA 19111	390196	03/07/2006	PA	
Frederick Imaging Centers 46B Thomas Johnson Drive Frederick, MD 21702	H476	03/07/2006	MD	
Fusion Diagnostic Group, LLC 1700 California Street Suite 260 San Francisco, CA 94109	00G366470	03/07/2006	CA	
Fusion Imaging Institute 2419 E. Commercial Boulevard Suite 101 Ft. Lauderdale, FL 33308	18281	03/07/2006	FL	
Future Diagnostics Group 254 N. Republic Avenue Joliet, IL 60435	200825	03/07/2006	IL	
Greater Niagra PET, LLC 1 Columbia Drive Suite 3 Niagra Falls, NY 14305	BA0213	03/07/2006	NY	Witmer Park Medical Center
Hematology Oncology Associates of Baton Rouge 4950 Essen Lane Baton Rouge, LA 70809	5C696	03/07/2006	LA	

Gulf Coast Cancer & Diagnostic of Southeast 12811 Beamer Road Houston, TX 77089	149949301	03/07/2006	TX	
Henry Ford, Department of Radiology 2799 W. Grand Boulevard Detroit, MI 48202	230053	03/07/2006	MI	
High Point Regional Health System 601 N. Elm Street High Point, NC 27262	3400040	03/07/2006	NC	
Highlands Oncology Group 3232 N. North Hills Boulevard Fayetteville, AR 27203	5B823	03/07/2006	AR	
Holy Name Hospital 718 Teaneck Road Teaneck, NJ 07666	310008	03/07/2006	NJ	PET/CT Center
Holy Family Memorial Medical Center PO Box 1450 Manitowoc, WI 54221	520107	03/07/2006	WI	2300 Western Ave
Hospital of Saint Raphael 1450 Chapel Street New Haven, CT 05611	070001	03/07/2006	CT	
San Patricio MRI & CT Center 1508 Roosevelt Avenue, Suite 103 San Juan, PR 00920	84997	03/07/2006	PR	

Imaging Center of Hartford Hospital 80 Seymour Street PO Box 5037 Hartford, CT 06102	070025	03/07/2006	CT	
Indian Wells PET/CT Center 74785 Highway 111, #101 Indian Wells, CA 92210	1264523891	03/07/2006	CA	
Imaging Technology Associates 3800 Reservoir Road NW Washington, DC 20007	FDNCX1	03/07/2006	DC	Gorman 2043, PET Scan
San Francisco Magnetic Resonance Center 1180 Post Street San Francisco, CA 94109	ZZZ27498Z	03/07/2006	CA	
Intermountain Medical Imaging 2929 E Magic View Drive Meridian, ID 83642	82-05144-22	03/07/2006	ID	
Jefferson Center City Imaging 850 Walnut Street Philadelphia, PA 19107	66277	03/07/2006	PA	
Kansas City Cancer Center-Kansas 12200 W. 110th Street Overland Park, KS 66210	5650000D	03/07/2006	KS	
Kansas City Cancer Center-Missouri 4881 Goodview Circle Lee's Summit, MO 66064	5650000E	03/07/2006	MO	
Kreitchman PET Center 180 Ft. Washington Avenue, HP3-315 New York, NY 10032	WEM661	03/07/2006	NY	

LakePointe PET 10914 Hefner Pointe Drive Suite 100 Oklahoma City, OK 73120	700522143	03/07/2006	OK	
Lakeshore PET Imaging, LLC 4932 W 95th Street Oak Lawn, IL 60453	200108	03/07/2006	IL	
Larchmont Imaging Associates, LLC 210 Ark Road Mt. Laurel, NJ 08054	517216	03/07/2006	NJ	
Las Cruces PET/CT Imaging 1121 Mall Drive Suite D Las Cruces, NM 88011	300521065	03/07/2006	NM	
Lehigh Valley Diagnostic Imaging PET/CT 1230 S. Cedar Crest Boulevard Suite 104 Allentown, PA 18103	563802	03/07/2006	PA	
LifeScan Louisville, LLC 4046 Dutchmans Lane Louisville, KY 40207	9365601	03/07/2006	KY	
Limerick PET Associates 420 W. Linfield-Trappe Road Limerick, PA 19468	075015	03/07/2006	PA	Suite 3400, Third Floor, Rear
LifeScan Minnesota 6525 France Avenue S Suite 225 Edina, MN 55435	470000014	03/07/2006	MN	
Louisiana PET Imaging of Alexandra, LLC 5419 A Jackson Street Exit Alexandria, LA 71303	5C743	03/07/2006	LA	
LMR PET 12600 Creekside Lane Ft. Meyers, FL 33919	E5725	03/07/2006	FL	

Louisiana PET Imaging of Lake Charles, LLC 1750 Ryan Street Lake Charles, LA 70601	5C905	03/07/2006	LA	
Insight Diagnostic Center-Forest Lane 11617 N. Central Expressway #132 Dallas, TX 75243	FTA016	03/07/2006	TX	
MDI of Thousand Oaks 300 Lombard Street Thousand Oaks, CA 91360	W14186	03/07/2006	CA	
Meadowbrook PET Associates 1695 Huntington Pike Meadowbrook, PA 19046	064866	03/08/2006	PA	
Medical Imaging of Baltimore 6715 N. Charles Street Baltimore, MD 21204	258L	03/08/2006	MD	
Metabolic Imaging of Laredo 2344 Laguna Del Mar Suites 5 & 6 Laredo, TX 78045	FTN029	03/08/2006	TX	
Methodist Hospital PET Imaging Center 301 W. Huntington Drive Suite 120 Arcadia, CA 91007	9511643336	03/08/2006	CA	
Metro Region PET Center at Chevy Chase 5454 Wisconsin Avenue Suite 810 Chevy Chase, MD 20815	724811	03/08/2006	MD	
Clinical PET of St. Charles County 1475 Kisker Road St. Charles, MO 63304	000047047	03/08/2006	MO	

Metro Region PET Center at Woodburn Nuclear Medicine 3289 Woodburn Road Annandale, VA 22003	724811	03/08/2006	VA	
Michiana Hematology-Oncology, PC 100 Navarre Place Suite 5550 South Bend, IN 46601	216950	03/08/2006	IN	
Michigan State University-Radiology 184 Radiology Building East Lansing, MI 48824	OC36350	03/08/2006	MI	
Clinical PET of West County 450 N. New Ballas Road Creve Coeur, MO 63141	000093043	03/08/2006	MO	
Modality Integration Services, Inc. 1854 SW Greenway Circle West Linn, OR 97068		03/08/2006	OR	
Molecular Imaging Center 1733 Curie Drive Suite 305 El Paso, TX 79912	00315U	03/08/2006	TX	
Molecular Imaging of Suburban Chicago, LLC 908 N. Elm Street Suite 110 Hinsdale, IL 60521	212300	03/08/2006	IL	
Montclair Road Imaging LLC 924 Montclair Road Suite 108 Birmingham, AL 35213	000056277	03/08/2006	AL	
Montefiore Medical Center 1695A Eastchester Road Bronx, NY 10461	W06552	03/08/2006	NY	

Neurodiagnostics, PSC 1725 Harrodsburg Road Suite 100 Lexington, KY 40504	0406	03/08/2006	KY	
New Century Imaging 555 Kinderkamack Road Oradel, NJ 07649	085146	03/08/2006	NJ	
Newport Diagnostic Center 1605 Avocado Avenue Newport Beach, CA 92660	W13396	03/08/2006	CA	
Next Generation Radiology PET/CT 560 Northern Boulevard Suite 111 Great Neck, NY 11021	WR6091	03/08/2006	NY	
North Valley MRI and CT 1638 Esplanade Chico, CA 95926	ZZZ247802	03/08/2006	CA	
Northwest Alabama Cancer Center Radiology Services 302 W. Dr. Hicks Boulevard Florence, AL 35630	051552219	03/08/2006	AL	
Northern Kentucky PET Scan, LLC 651 Centre View Boulevard Crestview Hills, KY 41017	311754291	03/08/2006	KY	
Northwest Cancer Center 17323 Red Oak Drive Houston, TX 77090	00D29C	03/08/2006	TX	
Northwestern Memorial Hospital 251 East Huron Street Chicago, IL 60611	140281	03/08/2006	IL	Galter 8-113
Northern Shared Medical Services-Atlantic, IA 1501 East Tenth Street Atlantic, IA 50022	I16068	03/08/2006	IA	Cass County Memorial Hospital

Northern Shared Medical Services-Audubon, IA 515 Pacific Street Audubon, Iowa 50025	I16068	03/08/2006	IA	Audobon County Memorial Hospital
Northern Shared Medical Services- Beloit, KS 400 West Eighth Beloit, KS 67420	130618	03/10/2006	KS	Mitchell County Hospital
Northern Shared Medical Services-Bloomfield, IA 507 North Madison Street Bloomfield, IA 52537	I16068	03/10/2006	KS	Davis County Hospital
Northern Shared Medical Services-Carrollton, MO 1502 North Jefferson Carrollton, MO 64633	000047013	03/10/2006	MO	Carroll County Memorial Hospital
Northern Shared Medical Services-Centerville, IA 1st St. Joseph Drive Centerville, IA 52544	I16068	03/10/2006	IA	Mercy Medical Center
Northern Shared Medical Services-Carthage, IL 160 S. Adams Street Carthage, IL 62321	208196	03/10/2006	IL	Memorial Hospital
Northern Shared Medical Services-Clarinda, IA 823 S. 17th Street Clarinda, IA 51632	I16068	03/10/2006	IA	Clarinda Regional Health Center
Northern Shared Medical Services-Chanute, KS 629 South Plummer Avenue Chanute, KS 66720	130618	03/10/2006	KS	Neosho Memorial Regional Medical Center

Northern Shared Medical Services-Edwardsville, IL 1121 University Drive Edwardsville, IL 62025	208196	03/10/2006	IL	Edwardsville Health Center
Northern Shared Medical Services- El Dorado, AR 700 West Grove Street. El Dorado, AR 71730	5F168	03/10/2006	AR	Medical Center of South Arkansas
Northern Shared Medical Services-Farmington, MO 1212 Weber Road Farmington, MO 63640	000047013	03/10/2006	MO	Mineral Area Regional Medical Center
Northern Shared Medical Services-Janesville, WI 1321 Creston Park Drive Janesville, WI 53545	000092420	03/10/2006	WI	Janesville Occupational Health & Medical Center
Northern Shared Medical Services-Hiawatha, KS 300 Utah Street Hiawatha, KS 66434	130618	03/10/2006	KS	Hiawatha Community Hospital
Northern Shared Medical Services-Keokuk, IA 1600 Morgan Street Keokuk, IA 52632	I16068	03/10/2006	IA	Keokuk Area Hospital
Northern Shared Medical Services-Macomb, IL 525 East Grant Street Macomb, IL 61455	208196	03/10/2006	IL	McDonough District Hospital
Northern Shared Medical Services-Mexico, MO 620 East Monroe Street Mexico, MO 65265	000047013	03/10/2006	MO	Audrain Medical Center
Northern Shared Medical Services-Moberly, MO 1515 Union Avenue Moberly, MO 65270	000047013	03/10/2006	MO	Moberly Regional Medical Center

Northern Shared Medical Services-Mountain Home, AR 899 Burnett Drive Mountain Home, AR 72653	5F168	03/10/2006	AR	Cogburn Cancer Clinic
Northern Shared Medical Services- Poplar Bluff, MO 221 Physicians Park Drive Poplar Bluff, MO 63901	000047013	03/10/2006	MO	Poplar Bluff Medical Partners
Northern Shared Medical Services-Perryville, MO 434 North West Street Perryville, MO 63775	000047013	03/10/2006	MO	Perry County Memorial Hospital
Northern Shared Medical Services- Rolla, MO 1000 West Tenth Street Rolla, MO 65401	000047013	03/10/2006	MO	Phelps Co Regional Medical Center
Northern Shared Medical Services-Virginia, MN 901 Ninth Street North Virginia, MN 55792	470000057	03/10/2006	MN	Virginia Regional Medical Center
Northern Shared Medical Services-Russellville, AR 2504 West Main Street Russellville, AR 72801	5F168	03/10/2006	AR	Russellville Land Co
Northern Shared Medical Services- West Plains, MO 1100 Kentucky Avenue West Plains, MO 65775	000047013	03/10/2006	MO	Ozarks Medical Center
Oakwood Hospital Medical Center 18101 Oakwood Boulevard Dearborn, MI 48124	230020	03/10/2006	MI	

Oakwood Southshore Medical Center 5450 Fort Street Trenton, MI 48183	230176	03/10/2006	MI	
Ocean Medical Imaging Center 21 Stockton Drive Toms River, NJ 08755	158432	03/10/2006	NJ	
Orange County Regional PET Center, LLC 16300 Sand Canyon Avenue Suite 103 Irvine, CA 92618	TP018	03/10/2006	CA	
Orange Advanced Imaging Center 230 Main Street, #101 Orange, CA 92868	TP016A	03/10/2006	CA	
Pacific Coast Imaging-Irvine 250 E Yale Loop Suite A Irvine, CA 92604	WG87478B	03/10/2006	CA	
Pacific Coast Imaging-Newport 3300 West Coast Highway Newport Beach, CA 92663	WG87478	03/10/2006	CA	
Pacific Imaging and Treatment Center 5395 Ruffin Road Suite 202 San Diego, CA 92123	TP126	03/10/2006	CA	
Palm Beach Cancer Institute 1395 State Road 7 Suite 310 Wellington, FL 33414	34754	03/10/2006	FL	
Pennsylvania PET Associates 800 Spruce Street Philadelphia, PA 19107	066282	03/10/2006	PA	Second Floor, Widener Building
PET Center of Western NY 127 North Street Batavia, NY 14020	187140	03/10/2006	NY	

Pet Imaging at CDR 7600 N 15th Street Suite 102 Phoenix, AZ 85020	WCFDG	03/10/2006	AZ	
PET Imaging at the Lake 5000 Hennessy Boulevard Baton Rouge, LA 70809	5C868	03/10/2006	LA	
PET Imaging Center at Harford County 602 S. Atwood Road Suite 201 Bel Air, MD 21014	FMN006	03/10/2006	MD	
PET Imaging Institute of South Florida East 150 N 35th Avenue #665 Hollywood, FL 33021	E3783	03/10/2006	FL	
PET Imaging Institute of South Florida-West 603 N Flamingo Road S-155 Pembroke Pines, FL 33028	E3783	03/10/2006	FL	
PET Scan Arizona-Peoria 13460 N 94th Drive Suite J1 Peoria, AZ 85381	75400	03/10/2006	AZ	
PET Scan Arizona-Phoenix 6036 N 19th Avenue Suite 305 Phoenix, AZ 85015	66860	03/10/2006	AZ	

PET/CT Diagnostic Medical Imaging, PC 1200 Waters Place Suite M108 Bronx, NY 10461	W31091	03/10/2006	NY	
Precision Imaging 4416 East West Highway Suite 410 Bethesda, MD 20814	FMN005	03/10/2006	MD	
Preferred PET Imaging of Kansas, LLC 928 N. St. Francis Street Wichita, KS 67214	110693	03/10/2006	KS	
Premium Diagnostics Center 5319 Hoag Drive Suite 130 Elyria, OH 44035	ID01851	03/10/2006	OH	
PET Center Ft. Worth 800 W. Magnolia Avenue Fort Worth, TX 76104	0J062	03/10/2006	TX	Suite 100
Radiology Associates, LLP 6001 S. Staples Street Corpus Christi, TX 78413	00E816	03/10/2006	TX	
S. Arlington Imaging Center 4601 Matlock Road Arlington, TX 76018	0J062	03/10/2006	TX	
Radiology Group Imaging Center, LLC 1970 E. 53rd Street Davenport, IA 52807	16031	03/10/2006	IA	
PET/CT Scan Center Pembroke 11325 Pembroke Square Suite 116 Waldorf, MD 20603	521454775	03/10/2006	MD	
New York MedScan 751 Second Avenue New York, NY 10017	978701	03/10/2006	NY	

Rex Healthcare 4420 Lake Boone Trail Raleigh, NC 27607	340114	03/10/2006	NC	
San Fernando Regional PET Center 6855 Noble Avenue Van Nuys, CA 91405	TP078	03/10/2006	CA	
PET/CT Imaging Center of Northwest Florida 5149 North 9th Avenue Suite 124 Pensacola, FL 32504	U4696	03/10/2006	FL	
Saint Joseph's Hospital-Nuclear Medicine 611 St. Joseph Avenue Marshfield, WI 54449	520037	03/10/2006	WI	
Shared PET Imaging, LLC-Brooklyn, NY 6300 Eight Avenue Brooklyn, NY 11220	97Z661	03/10/2006	NY	
SC Cancer Specialists 25 Hospital Center Boulevard #301 Hilton Head Island, SC 29926	1285633289	03/10/2006	SC	
Shared PET Imaging, LLC-Granger, IN 6901 N. Main Street Granger, IN 46530	232800	03/10/2006	IN	
University Hospital-Cincinnati Eden Avenue & Albert Sabin Way Cincinnati, OH 45219		03/10/2006	OH	
Shared PET Imaging, LLC – Marion, OH 1050 Delaware Avenue Marion, OH 43302	ID01511	03/10/2006	OH	
Shared PET Imaging, LLC-Terre Haute IN	201320	03/10/2006	IN	

3702 South Fourth Street Terre Haute, IN 47802				
South Jersey Radiology Associates, PA 100 Carnie Boulevard Suite B5 Voorhees, NJ 08043	S0429966	03/10/2006	NJ	
Southwest PET/CT Institute-Tucson 3503 N. Campbell Avenue Suite 155 Tucson, AZ 85719	1396736922	03/10/2006	AZ	
Southwest PET/CT Institute-Yuma 1951 W. 25th Street Suite G Yuma, AZ 85364	106077	03/10/2006	AZ	
St. Francis Health Center 1700 SW 7th Street Topeka, KS 66606	17-0016	03/10/2006	KS	
Southwoods PET Scan, LLC 250 Debartolo Place Building B Youngstown, OH 44512	PCN05210036	03/10/2006	OH	
St. Louis PET Centers, LLC 12637 Olive Boulevard Creve Coeur, MO 63376	1861470734	03/10/2006	MO	
St. Vincent's PET Center, LLC 2660 10th Avenue S, POBI Suite 104 Birmingham, AL 35205	051555054	03/10/2006	AL	
Sun Molecular Imaging -Peoria 13090 N. 94th Drive #103 Peoria, AZ 85381	71585	03/10/2006	AZ	
Sun Molecular Imaging -Sun City West 13909 W Camino Del Sol	71585	03/10/2006	AZ	

#101 Sun City West, AZ 85375				
Tarzana Advanced Imaging 5536 Reseda Boulevard Tarzana, CA 91356	TP051A	03/10/2006	CA	
The Methodist Hospital PET Center 6565 Fannin Street MBI-066 Houston, TX 77030	450358	03/10/2006	TX	
Texarkana PET Imaging Institute, LP 1929 Moores Lane Texarkana, TX 75503	FTN008	03/10/2006	TX	
The PET/CT Center of North Florida 5742 Booth Road Jacksonville, FL 32207	K7038P	03/10/2006	FL	
The Washington Hospital 155 Wilson Avenue Washington, PA 15301	390042	03/10/2006	PA	
The PET/CT Scanning Center 235 18th Street, SE Hickory, NC 28602	2881788	03/10/2006	NC	
Thompson Cancer Survival Center PET Imaging Center 9711 Sherrill Boulevard Knoxville, TN 37923	3791106	03/10/2006	TN	
Thunderbird MRI and PET Center 6591 W. Thunderbird Road Suite A-1 Glendale, AZ 85306	79467	03/10/2006	AZ	

Tower Imaging Roxsan 465 N. Roxbury Drive Suite 101 Beverly Hills, CA 90210	TP114	03/10/2006	CA	
Tower Hematology Oncology Medical Group 9090 Wilshire Boulevard Suite 200 Beverly Hills, CA 90211	W11793	03/10/2006	CA	
TRA Medical Imaging 2202 S Cedar Street Suite 200 Tacoma, WA 98405	001055600	03/10/2006	WA	
Trident PET of Fayette 1275 Highway 54 West Suite 102 Fayetteville, GA 30214	47BBBJJ	03/10/2006	GA	
Trident PET of Gwinnett 545 Old Norcross Road Lawrenceville, GA 30045	47BBBGX	03/10/2006	GA	Suite 200
Trident PET of Savannah 7135 Hodgson Memorial Drive Savannah, GA 31406	47BBBKP	03/10/2006	GA	Suite 10A
Tristan Associates 4520 Union Deposit Road Harrisburg, PA 17111	112344	03/10/2006	PA	
Union Square Diagnostic Imaging 144 Fourth Avenue New York, NY 10003	WR7502	03/10/2006	NY	

UCLA–Dept. of Molecular & Medical Pharmacology 10833 Le Conte Avenue Los Angeles, CA 90095	HW13029	03/10/2006	CA	AR-115-CHS
UCLA-Dept. of Molecular & Medical Pharmacology 10833 Le Conte Avenue Los Angeles, CA 90095	HW13029	03/10/2006	CA	AR-115-CHS
University Nuclear Medicine, Inc. 105 Parker Hall Buffalo, NY 14214	14414A	03/10/2006	NY	3435 Main St
University Radiology Group 75 Veronica Avenue Suite 102 Somerset, NJ 08873	425699	03/10/2006	NJ	
Anne Arundel Medical Center 2001 Medical Parkway Annapolis, MD 21401	210023	03/10/2006	MD	
US Imaging Center Corp., LLC 842 Sunset Lake Boulevard Suite 301 Venice, FL 34292	U0331	03/10/2006	FL	
USC PET Imaging Science Center 1510 San Pablo Street Suite 350 Los Angeles, CA 90033	W11874	03/10/2006	CA	
Rolling Oaks Radiology 415 Rolling Oak Drive, Suite 160 Thousand Oaks, CA 91361	W10746	03/10/2006	CA	

Vero Radiology Associates, Inc. 777 37th Street Suite A-103 Vero Beach, FL 32960	97445	03/10/2006	FL	
Ventura Coast Imaging Center 4601 Telephone Road Suite 101 Ventura, CA 93003	W11335	03/10/2006	CA	
Washington Imaging Services, LLC 1135-116th Avenue, NE Bellevue, WA 98004	GAB23386	03/10/2006	WA	
Washington Hospital Center 110 Irving Street, NW Washington, DC 20010	090011	03/10/2006	DC	
Washoe Med Imaging Services at 75 Kirman 75 Kirman Avenue Reno, NV 89502	WCHBB	03/10/2006	NV	
Wesley Long Hospital-Moses Cone Health System 501 North Elam Avenue Greensboro, NC 27403	34-0091	03/10/2006	NC	
Westcoast Radiology 36463 US Highway, 19 N. Palm Harbor, FL 34684	E4187	03/10/2006	FL	
Western Washington Oncology 4525 3rd Avenue SE Lacey, WA 98503	1497749642	03/10/2006	WA	
Windber Medical Center 600 Somerset Avenue Windber, PA 15963	390112	03/10/2006	PA	

Wyoming Valley PET Associates 190 Welles Street Forty Fort, PA 18704	045012	03/10/2006	PA	
Youngstown Regional PET Scan 850 McKay Court Youngstown, OH 44512	Y0ID0174	03/10/2006	OH	
X-RAY Associates at Santa Fe 490 A West Zia Road Suite 130 Santa Fe, NM 87505	2258263	03/10/2006	NM	
Sibley Memorial Hospital 5255 Loughboro Road, NW Washington, DC 20016	090005	03/10/2006	DC	
Lerman Diagnostic Imaging 6511 Fort Hamilton Parkway Brooklyn, NY 11215	16H771	03/10/2006	NY	
XRC Medical Imaging 53940 Carmichael Drive South Bend, IN 46635	187390	03/10/2006	IN	
St. Luke's Hospital 1026 A. Avenue N.E. Cedar Rapids, IA 52406-3026	160045	03/10/2006	IA	P.O. Box 3026
University Imaging at Science Park 110 Science Parkway Suite 100 Rochester, NY 14620	16624A	03/10/2006	NY	
Kadlec Medical Center/Nuclear Medicine Dept. 945 Goethals Street Richland, WA 99352	1972507580	03/10/2006	WA	
Central Georgia PET, LLC 1650 Hardmon Macon, GA 31201	47BBBKC	03/10/2006	GA	

PET/CT Imaging at Swedish Cancer Institute 1221 Madison Street First Floor Seattle, WA 98104	8857387	03/10/2006	WA	
National PET Scan Duval, LLC 425 North Lee Street Jacksonville, FL 32204	E7348	03/10/2006	FL	
National PET Scan Pinellas, LLC 805 Executive Center Drive W St. Petersburg, FL 33702	E7503	03/10/2006	FL	
National PET Scan Dade, LLC 7867 North Kendall Drive Suite 121 Miami, FL 33156	E5427	03/10/2006	FL	
National PET Scan Broward, LLC 6290 North Federal Highway Fort Lauderdale, FL 33308	E5432	03/10/2006	FL	
Scottsdale Medical Imaging, Ltd. 7624 E. Indian School Road Suite 109-1 Scottsdale, AZ 85251	WCFKX	03/10/2006	AZ	
Lakes Regional General Hospital 80 Highland Street Laconia, NH 03246	300005	03/10/2006	NH	
Northern California PET Imaging Center 3195 Folsom Boulevard Sacramento, CA 95816	ZZZ15725Z	03/10/2006	CA	
Northern California PET Imaging Center-Mobile 3195 Folsom Boulevard Sacramento, CA 95816	ZZZ25157Z	03/10/2006	CA	

Northern California PET Imaging Center-VAPA 3801 Miranda Avenue Palo Alto, CA 94304	ZZZ21308Z	03/10/2006	CA	
Advanced Medical Imaging 3548 Route 9 South Old Bridge, NJ 08857	595865	03/10/2006	NJ	
St. Vincent Infirmary Medical Center PET/CT Center 2 St. Vincent Circle Little Rock, AR 72205-5499	04-0007	03/10/2006	AR	
Lincoln Trail Diagnostics 1111 Woodland Drive Elizabethtown, KY 42701	470001408	03/10/2006	KY	
LifeScan Imaging 607 Clifty Street Somerset, KY 42503	7614	03/10/2006	KY	
St. John's Hospital Springfield Nuclear Medicine 1235 E. Cherokee Street Springfield, MO 65804	26-0065	03/10/2006	MO	
City of Hope 1500 E. Duarte Road Duarte, CA 91010	050146	03/10/2006	CA	Dept. of Nuclear Medicine
Hackettstown Regional Medical Center 651 Willow Grove Street Hackettstown, NJ 07840	310115	03/10/2006	NJ	

Imaging Alliance-Nashville PET, LLC 52 White Bridge Road. Nashville, TN 37205	3791068	03/10/2006	TN	
Molecular Imaging of Bradenton 2301 60th Street Court West Suite A Bradenton, FL 34209	U1334	03/10/2006	FL	
Molecular Imaging of Charlotte County 4130 Tamiami Trail Port Charlotte, FL 33952	U1934	03/10/2006	FL	
Imaging For Life 3830 Bee Ridge Road Suite A Sarasota, FL 34233	E6704	03/10/2006	FL	
Seattle Nuclear Medicine/Ultrasound Associates 1229 Madison Street Suite 1050 Seattle, WA 98104	G000158400	03/10/2006	WA	
Columbus Circle Imaging 1790 Broadway, 9th Floor Yonkers, NY10704	W00691	03/10/2006	NY	
Bryn Mawr Imaging Center-PET 100 Lancaster Avenue Wynnewood, PA 19096	473120	03/10/2006	PA	
Beth Israel Deaconess Medical Center 330 Brookline Avenue Boston, MA 02215	220086	03/10/2006	MA	
Boca Raton Community Hospital 800 Meadows Road Boca Raton, FL 33486	100168	03/10/2006	FL	

Centro Tomograficio de PR, Inc. 1409 Ashford Avenue San Juan, PR 00907	0087834	03/10/2006	PR	
Comprehensive Cancer Centers of Nevada 3730 S. Eastern Avenue Las Vegas, NV 89109	WCHCX	03/10/2006	NV	
Grossman Imaging Center of CMH 2151 E. Gonzales Road Suite 101 Oxnard, CA 93036	W17252	03/10/2006	CA	
Cookeville Regional Medical Center 142 W. 5th Street Cookeville, TN 38501	440059	03/10/2006	TN	
Instituto Central de Diagnostico, Inc. 1er. Floor Oncologic Hospital San Juan, PR 00928	007835	03/10/2006	PR	PR Medical Center
Mercy Medical Center-Cedar Rapids 701 Tenth Street SE Cedar Rapids, IA 52403	16-0079	03/10/2006	IA	
Midwest Radiologic Imaging-1144217241 4087 Gateway Boulevard Newburgh, IN 47630	1144217241	03/10/2006	IN	
Miami Valley Hospital 1 Wyoming Street Dayton, OH 45409	360051	03/10/2006	OH	

Midwest Radiologic Imaging-214790 4087 Gateway Boulevard Newburgh, IN 47630	214790	03/10/2006	IN	
Midwest Regional PET/CT Center 6001 S. Sharon Avenue Suite #2 Sioux Falls, SD 57108	41406	03/10/2006	SD	
Mission Hospital PET Center 222 Asheland Avenue Asheville, NC 28801	3400002	03/10/2006	NC	
Mobile Molecular Imaging, LLC 100 Memorial Hospital Drive Suite 1E Mobile, AL 36608	1003804345	03/10/2006	AL	
Nebraska Health Imaging 7819 Dodge Street Omaha, NE 68114	098975	03/13/2006	NE	
Montgomery Metabolic & Memory Imaging Center 7100 University Court Montgomery, AL 36117	057554625	03/13/2006	AL	
Orange County Diagnostic Radiology, Inc. 17150 Euclid Street Suite 101 Fountain Valley, CA 92708	TD057	03/13/2006	CA	
Northwest PET Imaging 265 N. Broadway Portland, OR 97227	105512	03/13/2006	OR	
Nevada Cancer Institute Medical Group One Breakthrough Way, 10441 W. Twain Avenue Las Vegas, NV 89135	100505	03/13/2006	NV	

Positron Emission Tomography Institute at Hampton 5357 Henneman Drive Norfolk, VA 23513	FVN001	03/13/2006	VA	
Positron Imaging Facility 1311 Record Crossing Road Mail Code 9140 Dallas, TX 75235	UT000F626	03/13/2006	TX	
Premier Diagnostic Imaging 10019 Forest Green Boulevard Louisville, KY 40299	9375201	03/13/2006	KY	
Positron PET/CT of the Southern Tier 169 Riverside Drive Binghamton, NY 13905	AA1047	03/13/2006	NY	
Radiology Regional Center, PA, Inc.-Naples 700 Goodlette Road Naples, FL 34102	77185	03/13/2006	FL	
Somascan Plaza, Inc. Suite 405 Torre de Plaza Plaza Las Americas San Juan, PR 00917	0089178	03/13/2006	PR	
Somascan, Inc. Jose Marti #56 San Juan, PR 00917	0082435	03/13/2006	PR	
Southern Indiana Radiological Associates 500 Landmark Avenue Bloomington, IN 47403	214160	03/13/2006	IN	
Southern Illinois Cancer Center 10286 Fleming Road Carterville, IL 62918	643740	03/13/2006	IL	
South Nassau PET One Healthy Way Oceanside, NY 11572	97z851	03/13/2003	NY	

Southwest Diagnostic Center for Molecular Imaging 8440 Walnut Hill Lane Suite 100 Dallas, TX 75231	FTN-015	03/13/2006	TX	
St. Mary's Health Systems 900 E. Oakhill Avenue Knoxville, TN 37917	440120	03/13/2006	TN	
Tower Diagnostic Center 4719 N. Habana Avenue Tampa, FL 33614	00169	03/13/2003	FL	
Torrance Morial Medical Center 3330 Lomita Boulevard Torrance, CA 90505	050351	03/13/2006	CA	
University of Colorado Hospital (AOP) 1635 N. Ursula Street Aurora, CO 80045	06-0024	03/13/2006	CO	
William Beaumont Hospital-Royal Oak 3601 West 13 Mile Road Royal Oak, MI 48073-6769	23030	03/13/2006	MI	
Esther Quijoy Catalya, M.D. 3000 Oak Road #111 Walnut Creek, CA 94597	00A449120	03/13/2006	CA	
Valley PET Institute 311 S. Ham Lane Lodi, CA 95242	00C283720	03/13/2006	CA	
Dan Ben-Zeev, M.D. 3000 Oak Road #111 Walnut Creek, CA 94597	00G129831	03/13/2006	CA	
Midwest Center for Advanced Imaging 1307 Macom Drive Naperville, IL 60564	L72461	03/13/2006	IL	

Crittenton Hospital Medical Center 1101 W. University Drive Rochester, MI 48307	230054	03/13/2006	MI	
Medical Specialists of Palm Beaches, Inc. 5700 Lake Worth Road Suite 204 Lake Worth, FL 33463	33941A	03/13/2006	FL	
PET Medical Imaging Center 3264 North Evergreen Drive Grand Rapids, MI 49525	0P02650	03/13/2006	MI	
Radiology Regional Center, PA, Inc.-RPET 6100 Winkler Road Suite A Fort Myers, FL 33919	77185	03/13/2006	FL	
Good Samaritan Hospital 520 S. 7th Street Vincennes, IN 47591	150042	03/13/2006	IN	
Central Indiana Cancer Center 6845 Rama Drive Indianapolis, IN 46219	065910	03/13/2006	IN	
Decatur PET Imaging 2774 W. Decatur Road Decatur, GA 30033	47BBBLP	03/13/2006	GA	
Community Memorial Hospital, Medical Imaging 855 S. Main Street Oconto Falls, WI 54154	00439MPN	03/13/2006	WI	
Olympic Radiology 2700 Clare Avenue Bremerton, WA 98310	000242100	03/13/2006	WA	
Capitol Imaging 3161 L Street Sacramento, CA 95816	1285615294	03/13/2006	CA	

National Medical Imaging-Bryn Mawr 574 W. Lancaster Avenue Bryn Mawr, PA 19010	024513	03/13/2006	PA	
National Medical Imaging-Langhorne 2 Doublewoods Road Suite B Langhorne, PA 19047	024513	03/13/2006	PA	
National Medical Imaging-Philadelphia 1903-05 South Broad Street Philadelphia, PA 19148	024513	03/13/2006	PA	
University of VA Health System, Radiology 1215 Lee Street Charlottesville, VA 22908	490009	03/13/2006	VA	
Florida Institute for Advanced Diagnostic Imaging 9238 US 19 Port Richey, FL 34668	59-3475930	03/13/2006	FL	
Roseville PET & Nuclear Medicine Imaging 2241 Douglas Boulevard #110 Roseville, CA 95661	1194706689	03/13/2006	CA	
Memorial Sloan Kettering Cancer Center 1275 York Avenue New York, NY 10021	330154	03/13/2006	NY	
Northeast PET Imaging Center 8400 Roosevelt Boulevard Suite 208 Philadelphia, PA 19152	083723	03/13/2006	PA	Medical Arts Center at Parte Ridge
UAMS PET Center 4301 West Markham Street Little Rock, AR 72205	50528	03/13/2006	AR	

Joliet Oncology-Hematology Assoc., Ltd. 1600 W. Route 6 Morris, IL 60450	205474	03/13/2006	IL	
Saint Luke's Hospital 4323 Wornall Road Kansas City, MO 64111	26-0138	03/13/2006	MO	AH Peet Center
Mercy Medical Center 1320 Mercy Drive Canton, OH 44708	360070	03/13/2006	OH	
Dayton Medical Imaging Center 7901 Schatz Pointe Drive Dayton, OH 45459	US1D00231	03/13/2006	OH	
Community Radiology of Virginia 2000 Leatherwood Lane Bluefield, VA 24605	FVA002	03/13/2006	VA	
Bab Radiology-Huntington 75 East Main Street Huntington, NY 11743	W1L612	03/13/2006	NY	
Bab Radiology-Hauppauge 521 Route 111 Suite 312 Hauppauge, NY 11788	W1L601	03/13/2006	NY	
Center for Diagnostic Imaging-37 5775 Wayzata Boulevard #190 St. Louis Park, MN 55416	470000037	03/13/2006	MN	
Center for Diagnostic Imaging 5775 Wayzata Boulevard Suite 190 St. Louis Park, MN 55416	C01307	03/13/2006	MN	
Center for Diagnostic Imaging-Mendota Heights 910 Sibley Memorial Highway Mendota Heights, MN 55118	470000038	03/13/2006	MN	

Huntsville Hospital Imaging Center 1963 Memorial Parkway Huntsville, AL 35801	010039	03/13/2006	AL	
Long Beach PET Imaging Center 2888 Long Beach Boulevard Suite 110 Long Beach, CA 90806	TG167	03/13/2006	CA	
Highway Imaging Associates, LLP 2095 Flatbush Avenue Brooklyn, NY 11234	W10671	03/13/2006	NY	
St. Vincent Hospital PO Box 13508 Green Bay, WI 54307	520075	03/13/2006	WI	
Park South Imaging Center 6215 21st Avenue West #A Bradenton, FL 34209	E1858	03/13/2006	FL	
Mary Bird Perkins Cancer Center 4950 Essen Lane Baton Rouge, LA 70809	57290	03/13/2006	LA	
Boston Diagnostic Imaging 398 Altamonte Drive Altamonte Springs, FL 32701	E3510	03/13/2006	FL	
Sioux Valley Hospital Medical Center 1305 W. 18th Street Sioux Falls, SD 57117	430027	03/13/2000	SD	
Indianapolis Regional PET Scan, LLC 3830 Shore Drive Indianapolis, IN 46254	207260	03/13/2006	IN	

St. Joseph's PET Center 1 Mercy Lane Suite 105 Hot Springs, AR 71913	5C739	03/13/2006	AR	
Hinsdale PET Scan, LLC 812 Ogden Avenue Westmont, IL 60559	206271	03/13/2006	IL	
Del Amo PET Imaging Center 3531 Fashion Way Torrance, CA 90501	TP120	03/13/2006	CA	
North Shore PET Imaging Center 85 Herrick Street Beverly, MA 1915	327110	03/13/2006	MA	Beverly Hospital
Robert D. Russo & Associates Radiology, PC PO Box 6128 Bridgeport, CT 06606	C02013	03/13/2006	CT	
Advanced Medical Specialties 9035 Sunset Drive Suite 102 Miami, FL 33173	K7806	05/03/2006	FL	
Baptist M & S Imaging Center-Downtown 215 E. Quincy Street #100 San Antonio, TX 78215	FTA078	05/03/2006	TX	
Community Cancer Center 545 W. Umpqua Street Roseburg, OR 97470	R116571	05/03/2006	OR	
Baptist M & S Imaging Center 7888 Fredericksburg Road San Antonio, TX 78228	FTA078	05/03/2006	TX	

Evanston Northwestern Healthcare-Highland Park 757 Park Avenue West Highland Park, IL 60035	14-0010	05/03/2006	IL	
Grenada Diagnostic Radiology 1300 Sunset Drive Suite U Grenada, MS 38901	470000034	05/03/2006	MS	
Huntsman Cancer Hospital 2000 Circle of Hope Suite 2121 Salt Lake City, UT 84112-5550	460009	05/03/2006	UT	
High Tech Medical Park 11800 Southwest Highway Palos Heights, IL 60463	0703070	05/03/2006	IL	
Cyrus Diagnostic Imaging, Inc. 165 Waymont Court Lake Mary, FL 32746	40586	05/03/2006	FL	
Indiana Regional PET Imaging 7891 Broadway Suite A Merrillville, IN 46410	229400	05/03/2006	IN	
Lancaster PET Imaging 2100 Harrisburg Pike Lancaster, PA 17601	054504	05/03/2006	PA	
James PET/CT Imaging Center 236 Doan Hall Columbus, OH 43210	360242	05/03/2006	OH	410 w. 10th Ave
Mary Lanning Memorial Hospital 715 N. St. Joseph Avenue Hastings, NE 68901	280032	05/03/2006	NE	

Maplewood Cancer Center-MOHPA 1580 Beam Avenue Maplewood, MN 55109	C01828	05/03/2006	MN	
Titusville Area Hospital 406 W. Oak Street Titusville, PA 16354	390122	05/03/2006	PA	
Memorial Hospital 325 S. Belmont Street York, PA 17403	390101	05/03/2006	PA	
Mercy Regional Health Center 1823 College Avenue Manhattan, KS 66502	17-0142	05/03/2006	KS	
Northshore Regional PET Scan, LLC 1464 Waukegan Road Glenview, IL 60025	206272	05/03/2006	IL	
Northwest Indiana PET/CT Center 1505 S. Calument Road Suites 7 & 8 Chesterton, IN 46304	229810	05/03/2006	AL	
Parkway Ventures, Inc. 9000 Franklin Square Drive Baltimore, MD 21237	FMN002	05/03/2006	MD	Franklin Square Hospital
PET Fusion Imaging 3707 New Vision Drive Fort Wayne, IN 46845	190320	05/03/2006	IN	
River Oaks Imaging & Diagnostics PO Box 4346 Houston, TX 77210	FTA059	05/03/2006	TX	Dept 848
Regional PET Scan, LLC-Beachwood 2000 Auburn Road Beachwood, OH 44122	REID02211	05/03/2006	OH	

Regional PET Scan, LLC-Fairview 20455 Lorain Road Fairview Park, OH 44126	REID02211	05/03/2006	OH	
Regional PET Scan, LLC-Ridgepark 7575 Northcliff Avenue Brooklyn, OH 44144	REID02211	05/03/2006	OH	
Saint Francis Hospital 114 Woodland Street Hartford, CT 06105	07-0002	05/03/2006	CT	
St Nicholas Hospital 3100 Superior Avenue Sheboygan, WI 53081	520044	05/03/2006	WI	
Swedish Medical Center 501 E. Hampton Avenue Englewood, CO 80113	060034	05/03/2006	CO	
St Bernards PET Center 225 E. Jackson Avenue Jonesboro, AR 72401	5C658	05/03/2006	AR	
Toledo Regional PET Scan, LLC 3442 Granite Circle Toledo, OH 43617	T0ID01881	05/03/2006	OH	
University MRI 3848 F.A.U. Boulevard Suite 200 Boca Raton, FL 33431	E1765	05/03/2006	FL	
Tucson PET Imaging 5355 E. Erickson Drive Tucson, AZ 85712	WCBBM	05/03/2006	AZ	
Via Christi Oklahoma Regional Medical Center 1900 N. 14th Street Ponca City, OK 74601	370006	05/03/2006	OK	

Christian Hospital 11133 Dunn Road St Louis, MO 63136	260180	05/03/2006	MO	
DRA Imaging PC 1 Columbia Street Poughkeepsie, NY 12601	W18691	05/03/2006	NY	
Cleveland Clinic Star Imaging 921 Jasonway Avenue Columbus, OH 43214	34-1932969	05/03/2006	OH	
Norman PET Associates, LLC 3750 W. Robinson Street Suite 130 Norman, OK 73072	900522224	05/03/2006	OK	
Rhode Island PET Services–St. Josephs 200 High Service Avenue N Providence, RI 02904	479003556	05/03/2006	RI	
Rhode Island PET Services-South County Hospital 100 Kenyon Avenue Wakefield, RI 02879	479003556	05/03/2006	RI	
Rhode Island PET Services-Roger Williams 825 Chalkstone Avenue Providence, RI 02908	479003556	05/03/2006	RI	
Rhode Island PET Services-Landmark 115 Cass Avenue Woonsocket, RI 02895	479003556	05/03/2006	RI	
Forest City Diagnostic Imaging 735 Perryville Road Rockford, IL 61107	546450	05/03/2006	IL	Lower Level 2

New England Molecular Imaging-York 15 Hospital Drive York, ME 03909	479003556	05/03/2006	ME	
Pavilion Imaging 750 Wellington Avenue Grand Junction, CO 81502	060023	05/03/2006	CO	
Lifescan Chicago 2242 W. Harrison Street Chicago, IL 600612	470000014	05/03/2006	IL	
Southeast Medical Imaging 300 Evergreen Drive Suite 210 Glen Mills, PA 19342	092801	05/03/2006	PA	
The Western Pennsylvania Hospital 4800 Friendship Avenue Pittsburgh, PA 15224	390090	05/03/2006	PA	
Southtowns PET/CT 550 Orchard Park Road West Seneca, NY 14224	14422A	05/03/2006	NY	
Main Street Radiology-Bayside 44-01 Francis Lewis Boulevard Bayside, NY 11361	04217	05/03/2006	NY	
Main Street Radiology-Bayside 44-01 Francis Lewis Boulevard Bayside, NY 11361	04217A	05/03/2006	NY	
West VA University Center for Advanced Imaging 1 Medical Center Drive Morgantown, WV 26506	9121131	05/03/2006	WV	PO Box 9236, Health Center South

Twin Lakes Medical Specialist, PA 228 Bucher Drive Mountain Home, AR 72653	5B019	05/03/2006	AR	
Valley Metabolic Imaging, LLC 6121 N Thesta Street Fresno, CA 93710	ZZZ23924Z	05/03/2006	CA	Suite 207
Johnson City Medical Center 400 North State of Franklin Johnson City, TN 37642	440063	05/03/2006	TN	
St Louis University Hospital 3665 Vista Avenue St Louis, MO 63110	000050109	05/03/2006	MO	
Margaret R. Pardee Memorial Hospital 800 North Justice Street Hendersonville, NC 28791	340017A	05/03/2006	NC	
Valley Imaging Partnership 1401 W. Merced Avenue #103 West Covina, CA 91790	TP035	05/03/2006	CA	
Sierra Imaging 155 Calle Portal Sierra Vista, AZ 85635	Z68496	05/03/2006	AZ	
Aspirus Wausau Hospital 333 Pine Ridge Boulevard Wausau, WI 54401	520030A	05/03/2006	WI	
Cancer Care Northwest PET Center 910 W 5th Avenue Spokane, WA 99204	1922072081	05/03/2006	WA	Suite 130

PET/CT Imaging of North Texas 2900 North I-35 Denton, TX 76201	00088Y	05/03/2006	TX	Suite 119
Loyola University Health System 2160 S. First Avenue Maywood, IL 60153	140276	05/03/2006	IL	
St. Elizabeth Medical Center One Medical Village Drive Edgewood, KY 41017	180035	05/03/2006	KY	
Cleveland Clinic 9500 Euclid Avenue Cleveland, OH 44195	9925511	05/03/2006	OH	
Ingalls Family Care Center 6701 159th Street Tinley Park, IL 60477	14-0191	05/03/2006	IL	
PET Fusion Center 4204 Houma Boulevard Metairie, LA 70006	5CB31	05/03/2006	LA	
United Regional Medical Center 1001 McArthur Drive Manchester, TN 37355	440007	05/03/2006	TN	
Joel Bernstein, MD 5395 Ruffin Road Suite 202 San Diego, CA 92123	W18972	05/03/2006	CA	
Hasnat Ahmed, MD 5395 Ruffin Road Suite 202 San Diego, CA 92123	W18370	05/03/2006	CA	

Meridian North Imaging Center 12188 N. Meridian Street Carmel, IN 46280	026010	05/03/2006	IN	Suite 100
Cancer Center Oncology Medical Group 5395 Ruffin Road Suite 202 San Diego, CA 92123	W12245A	05/06/2006	CA	
Firelands Regional Medical Center 1101 Decatur Street Sandusky, OH 44870	360025	05/03/2006	OH	
United Radiology-Greenbelt PO Box 34979 West Bethesda, MD 20827	FMN007	05/03/2006	MD	
Richard Just, MD 5395 Ruffin Road Suite 202 San Diego, CA 92123	W16197	05/03/2006	CA	
Michael Kipper, MD 5395 Ruffin Road Suite 202 San Diego, CA 92123	A24091	05/03/2006	CA	
McLaren Regional Medical Center 401 S. Ballenger Highway Flint, MI 48532	230141	05/03/2006	MI	
United Radiology- Silver Spring PO Box 34979 West Bethesda, MD 20827	FMN007	05/03/2006	MD	

United Radiology-Rockville PO Box 34979 West Bethesda, MD 20827	FMN007	05/03/2006	MD	
St Mary's Health Center 6420 Clayton Road St Louis, MO 63117	260091	05/03/2006	MO	
Bay Regional Medical Center 1900 Columbus Avenue Bay City, MI 48708	230041	05/03/2006	MI	
Lapeer Regional Medical Center 1375 N. Main Street Lapeer, MI 48446	230193	05/03/2006	MI	
Scottsdale Medical Imaging, Ltd.- SW Diagnostics 9003 E. Shea Boulevard Scottsdale, AZ 85260	1902896236	05/03/2006	AZ	
Valley Medical Oncology Consultants, Inc. 3000 Oak Road #111 Walnut Creek, CA 94597	ZZZ29659Z	05/03/2006	CA	
Northwest Community Hospital 800 W Central Road Arlington Heights, IL 60005	36-2340313	05/03/2006	IL	
PET Imaging of Dallas 8333 Douglas Avenue C-20 Dallas, TX 75225	FTN017	05/03/2006	TX	
PET Imaging of Dallas-Northeast 1250 R Northwest Highway Garland, TX 75041	FTN028	05/03/2006	TX	
St Joseph's Regional Medical Center 703 Main Street Paterson, NJ 07503	310019	05/03/2006	NJ	

PET Imaging of Houston 2493-A South Braeswood Blvd. Houston, TX 77030	FTN010	05/03/2006	TX	
Goshen General Hospital 200 High Park Avenue Goshen, IN 46526	150026	05/03/2006	IN	
PET Imaging of ELMC 8550 West 38th Avenue Suite 102 Wheat Ridge, CO 80033	800665	05/03/2006	CO	
PET Imaging of Houston-Southeast 6021 Fairmont Parkway Suite 120 Pasadena, TX 77505	FTN030	05/03/2006	TX	
Peninsula Imaging, LLC 560 Riverside Drive Suite A104 Salisbury, MD 21801	481L	05/03/2006	AL	
Zwanger-Pesiri 126 Hicksville Road Massapequa, NY 11758	W13931	05/03/2006	NY	
Las Calinas PET Imaging, LLP 1110 Cottonwood Lane Irving, TX 75038	FTN019	05/03/2006	TX	Suite 220
Mt Carmel Regional Medical Center 1102 East Centennial Drive Pittsburg, KS 66762	014041	05/03/2006	KS	
Iowa Blood & Cancer Care, PLC 855 A. Avenue NE Cedar Rapids, IA 52402	I6672	05/03/2006	IA	Medical Office Plaza, LL4
Hackensack University Medical Center 30 Prospect Avenue Hackensack, NJ 07601	310001	05/03/2006	NJ	

McLeod PET Imaging Center 800 East Cheves Street Florence, SC 29501	570370242001	05/03/2006	SC	Suite 170
St Alexius Medical Center 900 E. Broadway Avenue Bismarck, ND 58506	35-0002	05/03/2006	ND	PO Box 5510
Center for Diagnostic Imaging 1295 Orange Avenue Winter Park, FL 32789	K0097	05/03/2006	FL	
Charleston Radiologists, PA 9313 Medical Plaza Drive Charleston, SC 29406	1709	05/03/2006	SC	Suite 302
PET Imaging of Houston-West 9525 Katy Freeway Suite 102 Houston, TX 77024	FTN023	05/03/2006	TX	
University Hospitals of Cleveland 11100 Euclid Avenue Cleveland, OH 44106	36-0137	05/03/2006	OH	Mailstop BSHB5056
PET Imaging of Sugar Land 17320 W Grand Parkway S. Suite A Sugar Land, TX 77479	FTN027	05/03/2006	TX	
PET Imaging of Oklahoma City 1000 N. Lincoln Boulevard Suite 250 Oklahoma City, OK 73104	800522283	05/03/2006	OK	
PET Imaging of Tulsa 6711 S. Yale Avenue #104 Tulsa, OK 74136	400522320	05/03/2006	OK	

PET Imaging of The Woodlands 3091 College Park Drive Suite 340 The Woodlands, TX 77384	FTN021	05/03/2006	TX	
Tarrant Diagnostic Imaging 1121 8th Avenue Fort Worth, TX 76104	FTN012	05/03/2006	TX	
Wyandot Memorial Hospital 85 North Sandusky Avenue Upper Sandusky, OH 43351	361329	05/03/2006	OH	
Oregon Health & Science University 3181 SW Sam Jackson Park Road Portland, OR 97229	380009	05/03/2006	OR	
Saint John's Health System 2015 Jackson Street Anderson, IN 46016	150088	05/03/2006	IN	
Hudson Valley PET Imaging, LLC 160 North Midland Avenue Nyack, NY 10960	W1L903	05/03/2006	NY	
Kingston Diagnostic Center 167 Schwenk Drive Kingston, NY 12401	W1L921	05/03/2006	NY	
Appleton Medical Center 1818 N. Meade Street Appleton, WI 54911	520160	05/03/2006	WI	
St. Elizabeth Health Center 1044 Belmont Avenue Youngstown, OH 44501	360064	05/03/2006	OH	
Sinai Hospital of Baltimore 2401 West Belvedere Avenue Baltimore, MD 21215	210012	05/03/2006	MD	

Associates in Radiology of Plattsburgh, NY 762 Route 3 Suite 14 Plattsburgh, NY 12901	33572A	05/03/2006	NY	
Affiliated PET Systems-Rockville 9711 Medical Center Drive Rockville, MD 20850	FDNX01	05/03/2006	MD	
Lake Medical Imaging & Breast Center 1400 US Highway 441 North Suite 510 The Villages, FL 32159	59-3522082	05/03/2006	FL	
Affiliated PET Systems-Silver Spring 1400 Forest Glen Road Silver Spring, MD 20910	FDNX01	05/03/2006	MD	Suite 430
North Texas Clinical PET Institute 3535 Worth Street Suite 150 Dallas, TX 75246	99R339	05/03/2006	TX	
Lake Imaging Center 801 E. Dixie Avenue Suite 104 Leesburg, FL 34748	59-3635297	05/06/2006	FL	
Edwards Comprehensive Cancer Center 1400 Hal Greer Boulevard Huntington, WV 25701	510055	05/03/2006	WV	

Allison Cancer Center 301 North N Street Midland, TX 79701	140414744	05/03/2006	TX	
Clinical PET of Leesburg 8525 US Highway 441 Leesburg, FL 34748	E7179A	05/03/2006	FL	
Greene Medical Imaging, PC 159 Jefferson Heights D-106 Catskill, NY 12414	W25021	05/03/2006	NY	
Caritas PET Imaging, LLC-Norwood Hospital 70 Walnut Street Foxboro, MA 02035	32-7092	05/03/2006	MA	Caritas Norwood Hospital - Foxboro Campus
Caritas PET Imaging, LLC-New England Medical Center 750 Washington Street Boston, MA 02111	32-7092	05/03/2006	MA	Tufts - New England Medical Center
Austin, Radiological Assn.-San Marcos 1348 B Highway 123 South San Marcos, TX 78666	74-1597116	05/03/2006	TX	
ARA Imaging-Rock Creek 2120 N Mays Street #220 Round Rock, TX 78664	20-1651590	05/03/2006	TX	
ARA Imaging-Southwood 1701 W. Ben White Boulevard #170 Austin, TX 78704	20-1651590	05/03/2006	TX	

Elkhart General Hospital 600 East Boulevard Elkhart, IN 46514	15-0018	05/03/2006	IN	
Austin, Radiological Assn.-Midtown 1301 W. 38th Street Suite 100 Austin, TX 78705	74-1597116	05/03/2006	TX	
Caritas PET Imaging, LLC-St. Elizabeth's 736 Cambridge Street Boston, MA 02135	32-7092	05/03/2006	MA	St. Elizabeth's Medical Center
Global PET Imaging, LLC 1800 Hollister Drive Suite G-10 Libertyville, IL 60048	309590	05/03/2006	IL	Grand Oaks Health Center
Caritas PET Imaging, LLC-Carney Hospital 2100 Dorchester Avenue Dorchester, MA 02124	32-7092	05/03/2006	MA	Caritas Carney Hospital
Caritas PET Imaging, LLC-Milton Hospital 92 Highland Street Milton, MA 02186	32-7092	05/03/2006	MA	
Caritas PET Imaging, LLC–St. Anne's Hospital 795 Middle Street Fall River, MA 02721	32-7087	05/03/2006	MA	St. Anne's Hospital
Caritas PET Imaging, LLC-Good Samaritan 235 North Pearl Street Brockton, MA 02301	32-7087	05/03/2006	MA	Caritas Good Samaritan Medical Center
Panhandle PET Imaging 6700 W. 9th Avenue Amarillo, TX 79106	TFN0007	05/03/2006	TX	

PET Imaging of San Francisco 1700 California Street Suite 480 San Francisco, CA 94109	ZZZ-223-782	05/03/2006	CA	
PET/CT Imaging of Berkeley 2855 Telegraph Avenue Suite 100 Berkeley, CA 94705	ZZZ-288-837	05/03/2006	CA	
Western Maryland Health System-Sacred Heart Campus 902 Seton Drive Cumberland, MD 21502	210027	05/03/2006	MD	Western Maryland Health System-Sacred Heart Campus
Desert PET Imaging, LLC 1180 N. Indian Cyn Drive Palm Springs, CA 92262	ZZZ28648Z	05/03/2006	CA	
First PET of Stockton 4744 Quail Lake Drive Stockton, CA 95207	00A484230	05/03/2006	CA	
Utah Cancer Specialist 3838 South 700 East Salt Lake City, UT 84106	57172	05/03/2006	UT	Suite 100
Washington Radiology Associates, PC 2121 K Street, NW Washington, DC 20006	WA409885	05/03/2006	DC	Suite T-120
New Rochelle Radiology Associates, PC 175 Memorial Highway New Rochelle, NY 10801	W05571	05/03/2006	NY	
North Little Rock PET Associates, LLC 3500 Springhill Drive North Little Rock, AR 72117	5F437	05/03/2006	AR	Suite 100

Advanced Imaging Concepts, PL 13063 Cortez Boulevard Brooksville, FL 34613	94774	05/03/2006	FL	
Mansfield Imaging Center 536 S. Trimble Road Mansfield, OH 44906	MAD10921	05/03/2006	OH	
West Tennessee Imaging Center 300 Coatsland Drive Jackson, TN 38305	44-0002	05/03/2006	TN	
Imaging Center of North Central Indiana, Inc. 2201 W. Boulevard Kokomo, IN 46902	224110	05/03/2006	IN	
University of Kansas Hospital 3901 Rainbow Boulevard Kansas City, KS 66160	17-00040	05/03/2006	KS	Division of Nuclear Medicine
PET Imaging of SWLA, LLC 600 Bayou Pines East Lake Charles, LA 70601	5CK63	05/03/2006	LA	Suite A
Community Imaging Partners of Frederick 67 Thomas Johnson Drive Frederick, MD 21702	980M	05/03/2006	MD	
Community Imaging Partners of Olney 18111 Prince Phillip Drive #T-20 Olney, MD 20832	409410	05/03/2006	MD	Community Imaging Partners
The West Clinic, PC 100 N. Humphreys Boulevard Memphis, TN 38120	3704066	05/03/2006	TN	

Imaging Central LLC 7111 W. Central Avenue Toledo, OH 43617	IMID01641	05/03/2006	OH	
Advanced Radiology-Dixon 291 Stoner Avenue Westminster, MD 21157	527L	05/03/2006	MD	
Advanced Radiology-Harford Imaging 104 Plumtree Road Bel Air, MD 21015	527L	05/03/2006	MD	Suite 106
Advanced Radiology-Cross Roads 4801 Dorsey Hall Road Ellicott City, MD 21042	527L	05/03/2006	MD	Suite 101
Advanced Radiology-PET Imaging of MD 1700 Reisterstown Road Baltimore, MD 21208	527L	05/03/2006	MD	Suite 119
Cancer & Blood Disease Center 521 N. Lecanto Highway Lecanto, FL 34461	72840	05/03/2006	FL	
Huntington Outpatient Imaging Center, Inc. 800 S. Fairmount Avenue Pasadena, CA 91105	W1575B	05/03/2006	CA	Suite 120
Universal Imaging, Inc. 4600 Investment Drive Troy, MI 48083	ON69130	05/03/2006	MI	
Berger Health System 1170 North Court Street Circleville, OH 43113	360710	05/03/2006	OH	
Contemporary Imaging-Trenton 1676 Fort Street Trenton, MI 48183	0P23200	05/03/2006	MI	
South Tulsa PET, LLC 7712 S. Yale Avenue Tulsa, OK 74136	800522360	05/03/2006	OK	Ste 100

Cancer Center of the Carolinas 200 Andrews Street Greenville, SC 29601	6526	05/03/2006	SC	Suite 100
OSF Saint Francis Medical Center 530 NE Glen Oak Avenue Peoria, IL 61637	14-0067	05/03/2006	IL	
Sacred Heart-St. Mary's Hospitals, Inc. 2251 Northshore Drive Rhinelander, WI 54501	1100700	05/03/2006	WI	
Capital Region Radiation Therapy & Imaging 3400 W. Truman Boulevard Jefferson City, MO 65109	260047	05/03/2006	MO	PO 150832
University PET/CT Imaging 19 Bradhurst Avenue Hawthorne, NY 10532	W2Y371	05/03/2006	NY	Suite 1200
Aztech Radiology-Apache Trail 1840 W. Apache Trail Apache Junction, AZ 85222	Z72398	05/03/2006	AZ	
Aztech Radiology-Casa Grande 1669 E McMurray Boulevard Casa Grande, AZ 85222	Z25341	05/03/2006	AZ	
Missouri Cancer Associates 105 N. Keene Street Columbia, MO 65201	000012700	05/03/2006	MO	Suite 100
White River Medical Center 1710 Harrison Street Batesville, AR 72501	040119	05/03/2006	AR	
Englewood Hospital & Medical Center 350 Engle Street Englewood, NJ 07631	310045	05/03/2006	NJ	

Regional Imaging & Therapeutic Radiology Services 360 Bard Avenue Staten Island, NY 10310	1023095445	05/03/2006	NY	
Rocky Mountain Cancer Centers-South 7951 E. Maplewood Avenue Suite 300 Greenwood Village, CO 80111	204508	05/03/2006	CO	
Rocky Mountain Cancer Centers-North 7951 E. Maplewood Avenue Suite 300 Greenwood Village, CO 80111	204508	05/03/2006	CO	
Molecular Imaging of Hamilton County-Bethesda 4197 Fulton Road NW, Suite C Canton, OH 44718	MOID01221	05/03/2006	OH	
Molecular Imaging of Hamilton County-Good Sam 4197 Fulton Road NW, Suite C Canton, OH 44718	MOID01221	05/03/2006	OH	
Kettering Medical Center 3535 Southern Boulevard Kettering, OH 45429	360079	05/03/2006	OH	
St. Mary's Hospital 5801 Bremo Road Richmond, VA 23226	540793767	05/03/2006	VA	

Columbus Medical Institute of NY 97-85 Queens Boulevard Rego Park, NY 11374	05679	05/03/2006	NY	
Meadville Medical Center 1034 Grove Street Meadville, PA 16335	39-0113	05/03/2006	PA	
Chambersburg Hospital-Radiology 112 North Seventh Street Chambersburg, PA 17201	390151	05/03/2006	PA	
Oregon Advanced Imaging 881 O'Hare Parkway Medford, OR 97504	R114546	05/03/2006	OR	
Singing River Hospital 2809 Denny Avenue Pascagoula, MS 39581	250040	05/03/2006	MS	
East Texas Medical Center-Tyler 1000 S. Beckham Avenue Tyler, TX 75701	4500833	05/03/2006	TX	
Columbia, St. Mary's Hospital 2025 E. Newport Avenue Columbia Campus Milwaukee, WI 53211	520051	05/03/2006	WI	
Sharon Regional Health System 740 East State Street Sharon, PA 16146	390211	05/03/2006	PA	
Northern Ohio Imaging Center 1900 West River Road Elyria, OH 44035	36-0172	05/03/2006	OH	
Oxford Valley Diagnostic Center 940 Town Center Drive Langhorne, PA 19047	232745550	05/03/2006	PA	Suite F50>

The Emory Clinic 1365 Clifton Road Building C Room Court 048 Atlanta, GA 30322	582030692	05/03/2006	GA	
Alegent Health Bergan Mercy Medical Center 7500 Mercy Road Omaha, NE 68124	280060	05/03/2006	NE	
University Center Imaging 1065 Delaware Avenue Marion, OH 43302	20-3873307	05/03/2006	OH	
Elk Regional Health Center 763 Johnsonburg Road St Mary's, PA 15857	39-0154	05/03/2006	PA	
Health Park Hospital 1636 Higdon Ferry Road Hot Springs, AR 71913	04-0142	05/03/2006	AR	
Johnsonburg Health Center 81 Clarion Road Johnsonburg, PA 15845	39-0104	05/03/2006	PA	
Jane Phillips Medical Center 3500 E. Frank Phillips Boulevard Bartlesville, OK 74006	370015	05/03/2006	OK	
North Main Imaging Center 7650 First Place Suite B Oakwood Village, OH 44146	NEID01521	05/03/2006	OH	
PET Imaging Center of Delaware County-DCMH 501 North Lansdowne Avenue Drexel Hill, PA 19026	390081	05/03/2006	PA	

NEO-PET CRC Imaging 7650 First Place Suite B Oakwood Village, OH 44146	NEID01521	05/03/2006	OH	
PET Imaging Center of Delaware County-Springfield 190 West Sproul Road. Springfield, PA 19064	381080	05/03/2006	PA	
Harper University Hospital 3990 John R Street Detroit, MI 48201	230104	05/03/2006	MI	
Sinai-Grace Hospital 6071 W. Outer Drive Detroit, MI 48235	23-0024	05/03/2006	MI	
Seattle Radiologists APC 1229 Madison Street Seattle, WA 98104	G0001589600	05/03/2006	WA	#900
Huron Valley-Sinai Hospital 1 William Carl Drive Commerce, MI 48382	23-0277	05/03/2006	MI	
East Memphis PET Imaging 6005 Park Avenue Memphis, TN 38119	3374526	05/03/2006	TN	Suite 101B
UPMC-PET Imaging Facility 200 Lothrop Street Pittsburgh, PA 15213	390164	05/03/2006	PA	9th Floor B-Wing PUH
UPMC-PET Imaging Facility 300 Halket Street Pittsburgh, PA 15213	390114	05/03/2006	PA	
Rhode Island Hospital 593 Eddy Street Providence, RI 02903	05-025-8954	05/03/2006	RI	
David C. Pratt Cancer Center 607 South New Bulbs Road St Louis, MO 63141	260020	05/03/2006	MO	

Lewistown Hospital 400 Highland Avenue Lewistown, PA 17044	390048	05/03/2006	PA	
Lawrence Memorial Hospital 325 Maine Street Lawrence, KS 66044	170137	05/03/2006	KS	
Jameson Hospital 1211 Wilmington Avenue New Castle, PA 16105	39-0016	05/03/2006	PA	
Diagnostic Clinic of Houston 1200 Binz Street Houston, TX 77004	76-0203506	05/03/2006	TX	
Arlington Heights Radiology Center, LLC 121 South Wilke Road Arlington Heights, IL 60005	212301	05/03/2006	IL	
Oregon Imaging Center 1200 Hilyard Street Eugene, OR 97401	R0000WCPGH	05/03/2006	OR	#330
Arlington Heights Radiology Center, LLC 121 South Wilke Road Arlington Heights, IL 60005	212301	05/03/2006	IL	
Indiana Univ Radiology Assoc PET Imaging Center 950 W. Walnut Street Room E124 Indianapolis, IN 46202	959090	05/03/2006	IN	
Morristown Memorial Hospital 100 Madison Avenue Morristown, NJ 07962	310015	05/03/2006	NJ	
Baton Rouge Radiology Group 5422 Dijon Drive Baton Rouge, LA 70808	5B039	05/03/2006	LA	

North Texas PET Imaging 3720 South I-35E Denton, TX 76210	752131429	05/03/2006	TX	
Children's Hospital of Michigan PET Center 3901 Beaubien Street Detroit, MI 48201	23-3300	05/03/2006	MI	
Winchester Medical Center 1840 Amherst Street Winchester, VA 22601	490005	05/03/2006	VA	
Decatur Health Imaging, LLC 1123 16th Avenue SE Decatur, AL 35601	051555161	05/03/2006	AL	
Health Imaging Services, LLC 1760 Warnke Circle NE Cullman, AL 35058	051553273HEA	05/03/2006	AL	
PET/CT Imaging of the Mainline 21 Industrial Boulevard Suite 103 Paoli, PA 19301	097715	05/03/2006	PA	
PET Imaging of Brevard 1430 Pine Street Melbourne, FL 32901	39254	05/03/2006	FL	
North Carolina Baptist Hospital Medical Center Boulevard Winston Salem, NC 27157	34-0047	05/03/2006	NC	

St Francis Hospital 34515 9th Avenue S Federal Way, WA 98003	500108	05/03/2006	WA	
Saint Barnabas Outpatient Center 200 S. Orange Avenue Livingston, NJ 07039	440149	05/03/2006	NJ	
PET/CT Imaging of Ramapa Radiology 972 Route 45 Suite 106 Pomona, NY 10970	W21711	05/03/2006	NY	
Medical University of South Carolina PET/CT 169 Ashley Avenue Charleston, SC 29425	420004	05/03/2006	SC	
Akron General Medical Center 300 Wabash Avenue Akron, OH 44307	36-0027	05/03/2006	OH	
New England Molecular Imaging-Mercy Hospital 144 State Road Portland, ME 04103	NE327075	05/03/2006	ME	
New England Molecular Imaging-Penobscot Bay 6 Glenn Cove Drive Rockport, ME 04856	NE327076	05/03/2006	ME	
Center for Outpatient Services-St. Joseph 3900 Hollywood Road St. Joseph, MI 49085	23-0021	05/03/2006	MI	
New England Molecular Imaging-Central Maine 12 High Street Lewiston, ME 04240	NE327076	05/03/2006	ME	

Imaging Consultants, Inc.-Berkshire 8 Conte Drive Pittsfield, MA 01210	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Boston Medical 840 Harrison Avenue Boston, MA 02118	327083	05/03/2006	MA	
Imaging Consultants, Inc.-Boston PET One Brookline, Place Brookline, MA 02445	327083	05/03/2006	MA	
Baptist Memorial Hospital PET Center 6027 Walnut Grove Road Memphis, TN 38120	44-0048	05/03/2006	TN	
Southern Oklahoma PET/CT Imaging 701 E. Robinson Street Norman, OK 73071	90015477	05/03/2006	OK	
Ann G. Fetters Diagnostic Imaging Center 2151 N. Harbor Boulevard Fullerton, CA 92835	050168	05/03/2006	CA	
Pitt County Memorial Hospital 2100 Stantonsburg Road Greenville, NC 27835	56-0585243	05/03/2006	NC	
Inland Imaging, LLC 105 W. 8th Avenue Spokane, WA 99202	AB01749	05/03/2006	WA	Suite 100C
University of Chicago Hospitals 5758 S. Maryland Avenue Chicago, IL 60637	140088	05/03/2006	IL	Room #0150

Birch Medical Imaging Center 20162 SW Birch Street Newport Beach, CA 92660	W19353	05/03/2006	CA	
Tennessee Oncology PET Services 2018 Murphy Avenue Nashville, TN 37203	3709319	05/03/2006	TN	Suite 200
Tennessee PET Scan 1020 N. Highland Avenue Murfreesboro, TN 37130	3791187	05/03/2006	TN	Suite A
Texas Oncology-Harris Center HEB 1615 Hospital Parkway Bedford, TX 76022	00R66C	05/03/2006	TX	Suite 300
Greater Dayton Cancer Center 3120 Governor's Place Boulevard Kettering, OH 45409	9295791	05/03/2006	OH	
Martha Jefferson Hospital 459 Locust Avenue Charlottesville, VA 22902	490077	05/03/2006	VA	
Modern Diagnostic Imaging 600 S. Dobson Road Chandler, AZ 85224	107628	05/03/2006	AZ	Suite B-16
Christiana Care Nuclear Medicine/PET 4755 Ogletown-Stanton Road Newark, DE 19718	080001	05/03/2006	DE	

Advanced Imaging of Port Charlotte, LLC 2625 Tamiami Trail Port Charlotte, FL 33952	K6802	05/03/2006	FL	Suite 1
St. Joseph's Diagnostic Center-MLK 3003 Martin Luther King, Jr. Boulevard Tampa, FL 33067	97779	05/03/2006	FL	
South Carolina Oncology Associates 166 Stoneridge Drive Columbia, SC 29210	6275	05/03/2006	SC	
South Carolina Oncology Associates 166 Stoneridge Drive Columbia, SC 29210	6276	05/03/2006	SC	
Access Health Imaging 5257 Highway 82, East Lake Village, AR 71653	5M809	05/03/2006	AR	
PET/CT Services of Florida-Beverly Hills 3404 N. Lecanto Highway Beverly Hills, FL 34465	V0103	05/03/2006	FL	Beverly Hills Medical Park
PET/CT Services of Florida-Ocala 1541 SW 1st Avenue Ocala, FL 34474	V0103	05/03/2006	FL	Suite 101B
Blanchard Valley Regional Health Center 145 W. Wallace Street Findlay, OH 45840	360095	05/03/2006	OH	

Papastavros Associates Medical Imaging 1701 Augustine Cut-Off Wilmington, DE 19803	1083615561	05/03/2006	DE	
PET Imaging of Willowbrook 13300 Hargrave Road Houston, TX 77070	FTN032	05/03/2006	TX	Suite 130
PET Imaging of Northern Colorado 1915 Wilmington Drive Ft Collins, CO 80528	804621	05/03/2006	CO	Suite 101
Temecula Valley Advanced Imaging 25395 Hancock Avenue Murrieta, CA 92592	ZZZ-150752	05/03/2006	CA	Suite 110
Saint Anthony Memorial Health Center 301 West Homer Street Michigan City, IN 46360	A150015	05/03/2006	IN	
Salina Regional Health Center 400 S. Santa Fe Avenue Salina, KS 67401	170012	05/03/2006	KS	PO Box 5080
Cancer Center of Kansas 818 N. Emporia Street Wichita, KS 67214	110217	05/03/2006	KS	Suite 100
Clinton Crossings Imaging 995 Senator Keating Boulevard Rochester, NY 14618	14439A	05/03/2006	NY	
NSMS-Shelby County 4253 Argosy Court Madison, WI 53714	I16068	05/03/2006	WI	
Verrazano Radiology, PC 256A Mason Avenue Staten Island, NY 10305	200011201	05/03/2006	NY	

Imaging Consultants, Inc.-Brockton Hospital 680 Centre Street Brockton, MA 02301	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Cape Cod 252 Long Pond Drive Harwich, MA 02645	327085	05/03/2006	MA	Fontain Medical Center
Imaging Consultants Inc - Falmouth 100 Ter Hewn Drive Falmouth, MA 02540	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Jordan 275 Sandwich Street Plymouth, MA 02360	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Holyoke 575 Beech Street Holyoke, MA 01040	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Mercy Medical 271 Carew Street Springfield, MA 01089	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Lawrence Memorial 170 Governors Avenue Medford, MA 02155	327083	05/03/2006	MA	
Imaging Consultants, Inc.-Metro West 115 Lincoln Street Framingham, MA 01701	327083	05/03/2006	MA	
Imaging Consultants, Inc.-Milford 14 Prospect Street Milford, MA 01757	327085	05/03/2006	MA	

Imaging Consultants, Inc.-Quincy 114 Whitwell Street Quincy, MA 02196	327083	05/03/2006	MA	
Imaging Consultants, Inc.-Saints Memorial 2 Hospital Drive Lowell, MA 01852	327083	05/03/2006	MA	
Imaging Consultants, Inc.-Truesdale 1030 Presidents Avenue Fall River, MA 02720	327085	05/03/2006	MA	
Imaging Consultants, Inc.-Twin City 76 Summer Street Fitenburg, MA 01420	N/A	05/03/2006	MA	
Imaging Consultants, Inc.-Worcester 20 Worcester Center Boulevard Worcester, MA 01608	327085	05/03/2006	MA	
Sentara Mobile PET/CT-Careplex 5900 Lake Wright Drive Suite B Norfolk, VA 23502	250605	05/04/2006	VA	
Sentara Mobile PET/CT-Lake Wright 5900 Lake Wright Drive Suite B Norfolk, VA 23502	250605	05/04/2006	VA	
Sentara Mobile PET/CT-Princess Anne 5900 Lake Wright Drive Suite B Norfolk, VA 23502	250605	05/04/2006	VA	

Sentara Mobile PET/CT-Williamsburg 5900 Lake Wright Drive Suite B Norfolk, VA 23502	250605	05/04/2006	VA	
Memorial Hospital of South Bend 615 N. Michigan Street South Bend, IN 46601	150058	05/04/2006	IN	
NSMS-Belleville, IL 4253 Argosy Court Madison, WI 53714	208196	05/04/2006	WI	
NSMS-Flora, IL 4253 Argosy Court Madison, WI 53714	208196	05/04/2006	WI	
NSMS-Breese, IL 4253 Argosy Court Madison, WI 53714	208196	05/04/2006	WI	
SSM DePaul Health Center 12303 DePaul Drive St Louis, MO 63044	260104	05/04/2006	MO	
Lutheran Hospital 7950 W. Jefferson Boulevard Fort Wayne, IN 46804	150017	05/11/2006	IN	
Memorial MRI and Diagnostic 1346 Campbell Road Houston, TX 77055	00941U	05/11/2006	TX	
Shields Imaging of Eastern Mass 55 Fogg Road Weymouth, MA 2190	327088	05/11/2006	MA	
Baystate MRI and Imaging Center 3300 Main Street Springfield, MA 1107	327039	05/11/2006	MA	

Advanced Imaging Center 16110 Jog Road, 200 Delray Beach, FL 33446	U2049	05/11/2006	FL	
UMASS Memorial MRI and Imaging Center 214 Shrewsburg Street Worcester, MA 1604	327040	05/11/2006	MA	
RCOA Imaging Services 1108 Minnequa Avenue Pueblo, CO 81004	475748	05/11/2006	CO	
Adventist Health PET/CT-Hanford 450 N. Greenfield Avenue Hanford, CA 93230	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT-Feather River 5974 Pertz Road Paradise, CA 95969	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT-Sonora 1000 Greenley Road Sonora, CA 95370	ZZZ318852	05/11/2006	CA	
Sarasota Memorial PET 5350 University Parkway Sarasota, FL 34238	U1775	05/11/2006	FL	
Adventist Health PET/CT-Redbud 18th Ave. at Highway 53 PO Box 6710 Clear Lake, CA 95422	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT-St. Helena 10 Woodland Road St. Helena, CA 94574	ZZZ318852	05/11/2006	CA	
Adventist Health PET/CT-Ukiah 275 Hospital Drive Ukiah, CA 95482	ZZZ318852	05/11/2006	CA	

Mease Outpatient Imaging 1840 Mease Drive Safety Harbor, FL 34685	100265	05/11/2006	FL	
Bardmoor Outpatient Center 8787 Bryan Dairy Road Largo, FL 33777	00594C	05/11/2006	FL	
Trinity Outpatient Center 2102 Trinity Oaks Boulevard New Port Richey, FL 34655	00594D	05/11/2006	FL	
Walnut Creek Imaging Center 114 La Casa Via, #200 Walnut Creek, CA 94598	ZZZ13902Z	05/11/2006	CA	
Carlisle Imaging Center 1240 S. Ft. Harrison Clearwater, FL 33756	594	05/11/2006	FL	
Valley Radiology Imaging at Samaritan 2581 Samaritan Drive, #100 San Jose, CA 95124	ZZZ139851Z	05/11/2006	CA	
Forest Hills PET Imaging 102-02 Queens Boulevard Forest Hills, NY 11375	06998G	05/11/2006	NY	
Roper LowCountry PET Imaging Center 316 Calhoun Street Charleston, SC 29401	Q326280001	05/11/2006	SC	
Premier PET Imaging of NJ 119 Cherry Hill Road Parsippany, NJ 07054	68433	05/11/2006	NJ	Suite 100
Methodist Medical Center of Illinois 221 NE Glen Oak Avenue Peoria, IL 61636	370661223	05/11/2006	IL	
Medical Imaging of Baltimore 6715 N. Charles Street Baltimore, MD 21204	258L	05/12/2006	MD	

Yagnesh Oza, MD 4117 Velerous Memorial Drive Mt Vernon, IL 62864	212702	05/12/2006	IL	
Moffitt Cancer Center 12902 Magnolia Drive Tampa, FL 33612	100271	05/12/2006	FL	.
PrimeMed Imaging 5 Morgan Highway Suite 7 Scranton, PA18505	260	05/12/2006	PA	Morgan Medical Complex
Rockville PET Imaging, PC 119 North Park Avenue Rockville Centre, NY 11570	WTC601	05/12/2006	NY	Suite 101
Porter Adventist Hospital 2525 South Downing Street Denver, CO 80210	60064	05/12/2006	CO	
Rapid City Regional Hospital Medical Imaging Services 353 Fairmont Boulevard Rapid City, SD 57701	43007	05/12/2006	SD	
Advanced Radiolgy Consultants 56 Quarry Road Trumbull, CT 06611	C02747	05/12/2006	CT	
Northeastern PA Imaging Center 2601 Stafford Avenue Scranton, PA 18505-0305	475385	05/12/2006	PA	PO BOX 3305
Billings MRI Center 1041 North 29th Street Billings, MT 59101-1075	81030	05/12/2006	MT	
Aurora St. Luke's Medical Center 2900 W. Oklahoma Avenue Milwaukee, WI 53215	520138	05/12/2006	WI	Nuclear Medicine Department

Memorial & St. Elizabeth's Healthcare Services, LLC 4000 N. Illinois Lane Swansea, IL 62226	201339	05/12/2006	IL	PET/CT Imaging Center
Palm Beach Cancer Institute-West Palm Beach 1309 North Flagler Drive West Palm Beach, FL 33401-2710	34754	05/12/2006	FL	
Overlook Hospital 99 Beauvoir Avenue Summit, NJ 07902	8772966189	05/12/2006	NJ	
Ashland Bellefonte Cancer Center 122 Saint Christopher Drive Ashland, KY 41101	2150	05/12/2006	KY	
Bryn Mawr Imaging Center 101 S. Bryn Mawr Avenue Bryn Mawr, PA 19010	473120	05/12/2006	PA	
Oncology Alliance 1055 N. Mayfair Road Suite 100 Wauwatosa, WI 53220	32836000	05/12/2006	WI	
Shared PET Maimonides 6300 Eighth Avenue Brooklyn, NY 11220	97Z661	05/12/2006	NY	
Hoboken Radiology, LLC 79 Hudson Street Suite 100 Hoboken, NJ 07030	80395	05/12/2006	NJ	
Akron City Hospital 525 E. Main Street Akron, OH 44309	360020	05/12/2006	OH	

Park Avenue Radiologists, PC 525 E. Main Street Rome, GA 30165	W21771	05/12/2006	NY	
Comprehensive Blood & Cancer Center 6501 Truxtun Avenue Bakersfield, CA 93309	zzz238732	05/12/2006	CA	
Rome Imaging Center 309 West 10th Street Rome, GA 30165	GRP1221	05/12/2006	GA	
Hawaii PET Imaging 2230 Liliha Street Honolulu, HI 96817	54537	05/12/2006	HI	
Imaging Consultants, Inc. at Henry Heywood Hospital 242 Green Street Gardner, MA 01440	327085	05/12/2006	MA	
Imaging Consultants, Inc. at Nashoba Valley Medical Center 200 Groton School Road Ayer, MA 01432	327085	05/12/2006	MA	
Rhode Island PET Services at Memorial Hospital 111 Brewster Street Pawtucket, RI 2860	479003556	05/12/2006	RI	
Osceola Cancer Center 737 W. Oak Street Kissimmee, FL 34741	1629034202	05/12/2006	FL	
Valley Radiologists, Ltd.-Paseo II Office 5605 W. Eugie Avenue Suite 110 Glendale, AZ 85304	1902896236	06/13/2006	AZ	
Southeast GYN, Oncology PET 5210 Belfort Road Suite 130 Jacksonville, FL 32256	45542	06/13/2006	FL	

The Johns Hopkins PET Center 600 N. Wolfe Street Baltimore, MD 21287	210009	06/13/2006	MD	Nelson Basement
Maklansky, Grunter, Kurzban, Cohen, Zimmer, Hyman 165 East 84th Street New York, NY 10028	W20393	06/13/2006	NY	
Methodist Medical Center of Illinois 112 Crescent Avenue Peoria, IL 61636	370661223	06/13/2006	IL	
Phoebe Putney Memorial Hospital 417 Third Avenue PO Box 1828 Albany, GA 31702-1828	110007	06/13/2006	GA	
Eiber Radiology/PET Premier Imaging 21 West 49th Street Hialeah, FL 33012	k3166	06/13/2006	FL	
Botsford Hospital 28050 Grand River Avenue Farmington Hills, MI 48336	230151	06/13/2006	MI	
Middletown Regional Hospital 105 McKnight Drive Middletown, OH 45044	360076	06/13/2006	OH	
Waukesha Memorial Hospital 725 American Avenue Waukesha, WI 53188	390910727	06/13/2006	WI	
Battle Creek Health System 300 North Avenue Battle Creek, MI 49016	230075	06/13/2006	MI	

Orlando Regional Medical Center 1414 Kuhl Avenue Orlando, FL 32806	100006	06/13/2006	FL	
NorthEast Medical Center 1065 NorthEast Gateway Court NE Concord, NC 28025	340001	06/13/2006	NC	
Premier Medical Imaging 7651 Stagers Loop Delaware, OH 43015	9912921	06/13/2006	OH	
Advanced Radiolgy Consultants 15 Corporate Drive Trumbull, CT 6611	C02747	06/13/2006	CT	
Advance PET Imaging 23 Technology Drive East Setauket, NY 11733	46a401	06/13/2006	NY	
Premier PET Imaging of Wichita 500 S. Main Street Suite B Wichita, KS 67202	110682	06/13/2006	KS	
Health Center Northwest 320 Sunnyview Lane Kalispell, MT 59901	270087	06/13/2006	MT	
Olympic Medical Center 844 N. 5th Avenue Sequim, WA 98382	500072	06/13/2006	WA	
Premier PET Imaging of Jacksonville 5210 Belfort Road Suite 130 Jacksonville, FL 32256	K3166	06/13/2006	FL	
PET/CT Imaging of San Jose 2211 Moorpark Avenue Suite 220 San Jose, CA 95128	ZZZ19866Z	06/13/2006	CA	

The Reading Hospital and Medical Center 6th and Spruce Streets West Reading, PA 19611	390044	06/13/2006	PA	
Julia Rackley Perry Memorial Hospital 530 Park Avenue East Princeton, IL 61356	141337	06/13/2006	IL	
Ashland Bellefonte Cancer Center 122 Saint Christopher Drive Ashland, KY 41101	2150	06/13/2006	KY	
Tower Imaging BBD 14231 Bruce B Down Boulevard Tampa, FL 33613	169	06/13/2006	FL	
VyMed Diagnostic Imaging Tampa, LLC 10010 N. Dale Mabry Suite 160 Tampa, FL 33618	U4068	06/13/2006	FL	
Texas Oncology Cancer Center Sugar Land 1350 First Colony Boulevard Sugar Land, TX 77479	00073F	06/13/2006	TX	
Samaritan North Health Center 9000 N. Main Street Dayton, OH 45415	360052	06/13/2006	OH	
The PET Center of Oxford 1612 US Highway 78 East Suite 102 Oxford, AL 36203	51554888	06/13/2006	AL	
Shared PET Mem Lighthouse 6901 N. Main Street Granger, IN 46530	232800	06/13/2006	IN	
Shared PET Hope Cancer Center 3702 South Fourth Street Terre Haute, IN 47802	201320	06/13/2006	IN	

Athens Regional Medical Center 1199 Prince Avenue Athens, GA 30606	110074	06/13/2006	GA	
Muskogee PET & Nuclear Imaging 3300 Chandler Road Suite #106 Muskogee, OK 74403	400522529	06/13/2006	OK	
Lubbock Imaging Center 4011 19th Street Lubbock, TX 79410	00027K	06/13/2006	TX	
Memorial Medical Center 701 N. First Street Springfield, IL 62781	140148	06/13/2006	IL	
Hamamatsu/Queen's PET Imaging Center 1301 Punchbowl Street Honolulu, HI 96813		06/13/2006	HI	
Aurora BayCare Medical Center 2845 Greenbrier Road Green Bay, WI 54308	520193	06/13/2006	WI	
Medical Center of Plano 3901 W. 15th Street Plano, TX 75002	450651	06/13/2006	TX	
Carolinas Medical Center 1000 Blythe Boulevard Charlotte, NC 28203	340113	06/13/2006	NC	
Redwood Regional Medical Group d.b.a. Santa Rosa Radiology 121 Sotoyome Street Santa Rosa, CA 95405	680344865	06/13/2006	CA	
Boone Hospital Center 1600 East Broadway Columbia, MO 65201	260068	06/13/2006	MO	

River Radiology 45 Pine Grove Avenue Kingston, NY 12401	W30681	06/13/2006	NY	
University of Washington Medical Center 1959 NE Pacific Street Seattle, WA 98195	142700	06/13/2006	WA	
Mid American Imaging-Salem 1987 E. 4th Street Salem, OH 44460	ID00804	06/13/2006	OH	
Piedmont Medical Center 222 S. Herlong Avenue Rock Hill, SC 29732	420002	06/13/2006	SC	
Alliance Imaging-Sparks 1311 South I Street Fort Smith, AR 72817	5F463	06/13/2006	AR	
Radiology Imaging Associates 1825 SE Tiffany Avenue Suite 104 Port St. Lucie, FL 34952	52	06/13/2006	FL	
Mount Sinai Medical Center One Gustave L. Levy Place New York, NY 10029	H23620	06/13/2006	NY	
NSMS-Ottawa, IL 4253 Argosy Court Madison, WI 53714	208196	06/13/2006	WI	
Center for Diagnostic Imaging 1550 E. Chestnut Avenue Vineland, NJ 08360	53290	06/13/2006	NJ	Bldg 4 Suite A
St. Mary Mercy Hospital-Livonia 36475 Five Mile Road Livonia, MI 48154	230002	06/13/2006	MI	
Harold Leever Regional Cancer 1075 Chase Parkway Waterbury, CT 06708	470000025	06/13/2006	CT	

Kentucky Metabolic Imaging 2425 Regency Road Suite B Lexington, KY 40503	9366001	06/13/2006	KY	
Western Baptist Hospital 2501 Kentucky Avenue Paducah, KY 42001	180104	06/13/2006	KY	
St. Anthony Regional Hospital 311 South Clark Street Box 628 Carroll, IA 51401	1720067127	06/13/2006	IA	
Alliance Imaging-Sequoia Hospital 170 Alameda De Las Pulgas Redwood City, CA 94062	ZZZ28890Z	06/13/2006	CA	
Craven Regional Medical Center 2000 Neuse Boulevard New Bern, NC 28560	340131	06/13/2006	NC	
Alliance Imaging-Tri City Medical Center 4002 Vista Way Oceanside, CA 92056	TG281C	06/13/2006	CA	
Alliance Imaging-Yavapai Del Webb Outpatient Center Prescott Valley, AZ 86314	76103	06/13/2006	AZ	3262 Windsong Drive
Saint Vincent's Comprehensive Cancer Center 325 West 15th Street New York, NY 10011	330290	06/13/2006	NY	
Alliance Imaging-Southwest Medical Imaging 3104 Stockton Hill Road Kingman, AR 86401	76103	06/13/2006	AZ	
Alliance Imaging-North Idaho Imaging 700 Ironwood Drive Coeur d'Alene, ID 93814	1790291	06/13/2006	ID	

Froedtert Hospital 9200 W. Wisconsin Avenue Milwaukee, WI 53226	520177	06/13/2006	WI	
Alliance Imaging-Flagstaff Medical Center 1200 N. Beaver Street Flagstaff, AZ 86001	71855	06/13/2006	AZ	
South Florida Oncology and Hematology Consultants 4850 W. Oakland Park Boulevard Lauderdale Lakes, FL 33313	33873	06/13/2006	FL	Suite A
Alliance Imaging- Sierra Vista 300 El Camino Real Sierra Vista, AZ 85635	71855	06/13/2006	AZ	
Alliance Imaging- St. Joseph Eureka 2700 Dolbeer Street Eureka, CA 95501	zzz23046z	06/13/2006	CA	
Alliance Imaging- Corvallis Clinic 3680 NW Samaritan Drive Corvallis, OR 97330	132104	06/13/2006	OR	
Bridgeport Hospital 267 Grant Street Bridgeport, CT 06610	70010	06/13/2006	CT	
Valley Radiologists, Ltd.-Paseo II Office 5605 W. Eugie Avenue Glendale, AZ 85304	1902896236	06/13/2006	AZ	Suite 110
Central Texas Medical Center 1301 Wonder World Drive San Marcos, TX 78666	450272	06/13/2006	TX	

Alliance Imaging-Verde Valley Medical Center 269 S. Candy Lane Cottonwood, AZ 86326	76103	06/13/2006	AZ	
Alliance Imaging-Union Hospital Cecil 106 Bow Street Elkton, MD 21821	FMN008	06/13/2006	MD	
St. Joseph Mercy Hospital – Ann Arbor 5301 E. Huron River Road Ann Arbor, MI 48106	230156	06/13/2006	MI	
Alliance Imaging-Navapache 2200 E. Show Low Lake Show Low, AZ 85901	76103	06/13/2006	AZ	
St. Clare Medical Center 1710 Lafayette Road Crawfordsville, IN 17933	150022	06/13/2006	IN	
Boynton Beach EFL Imaging Center, LLC 2300 S. Congress Avenue Boynton Beach, FL 33426	272376000	06/13/2006	FL	#105
Aurora Medical Center Oshkosh 855 N. Westhaven Drive Oshkosh, WI 54904	590198	06/13/2006	WI	
Southeast GYN, Oncology PET 5210 Belfort Road Jacksonville, FL 32256	45542	06/13/2006	FL	Suite 130

Stockton MRI & Molecular Imaging Medical Center 2320 N. California Street, #2 Stockton, CA 95219	ZZZ290872	06/13/2006	CA	
South Texas Cancer Center 2150 N. Expressway 83 Brownsville, TX 78521	14041756	06/13/2006	TX	
Southwest Cancer Care Medical Group 5395 Ruffin Road San Diego, CA 92123	W4957B	06/13/2006	CA	#202
Radiology Associates of Venice and Englewood, PA 512-516 S. Nokomis Avenue Venice, FL 34285	99390	06/13/2006	FL	
Langlade Memorial Hospital Oncology 112 E. 5th Avenue Antigo, WI 54409	521350	06/13/2006	WI	
RCOA Imaging Services 305 South 5th Street Enid, OK 73701	400522301	06/13/2006	OK	
North Shore Hematology Oncology Associates, PC 235 N. Belle Mead Road East Setauket, NY 11733	W04051	06/13/2006	NY	
Providence Holy Cross Imaging Center 26357 McBean Parkway Suite 155 Santa Clarita, CA 91355	TP129	06/13/2006	CA	
Alaska Open Imaging Center, LLC 6911 DeBarr Road Anchorage, AK 99504	K153149	06/13/2006	AK	

Temecula Valley Nuclear Medicine 25485 Medical Center Drive Murrieta, CA 92562	00A417170	06/13/2006	CA	Suite 102
Hematology Oncology Assoc. of the Treasure Coast 1801 SE Hillmoor Drive Port Saint Lucie, FL 34952	40806	06/13/2006	FL	Suite B-107 (Mobile)
The Center for Cancer and Blood Disorders 800 W. Magnolia Avenue Fort Worth, TX 76104	00L79L	06/13/2006	TX	
Alliance Imaging-South Coast Medical Center 31872 Pacific Coast Highway Laguna Beach, CA 92651	TG281B	06/13/2006	CA	
The Medical Center at Bowling Green 250 Park Street Bowling Green, KY 42101	180013	06/13/2006	KY	PET/CT Center
Johns Hopkins Bayview Medical Center 4940 Eastern Avenue Baltimore, MD 21224	210029	06/13/2006	MD	Imaging Department-Nuclear Medicine
University of Michigan, Department of Radiology 1500 E. Medical Center Drive Ann Arbor, MI 48109	230046	06/13/2006	MI	Box 0028, B1H418 University Hospital
Carmichael Imaging, LLC 4147 Carmichael Road Montgomery, AL 36106	51551742	06/13/2006	AL	
Clearfield Hospital 809 Turnpike Avenue Clearfield, PA 16830	390052	06/13/2006	PA	
Clinical Pet of Hernando 4003 Mariner Boulevard Spring Hill, FL 34609	V2683	06/13/2006	FL	

Booth Radiology 105 Kings Way W. Hurffville-Crosskeys Road Sewell, NJ 08080	39460	06/13/2006	NJ	
Clinical PET of Zepherhills 38044 Daughtery Road Zephyrhills, FL 33542	E7179B	06/13/2006	FL	
Radiology & Diagnostic Imaging 2200 East Parrish Avenue Owensboro, KY 42303	3641	06/13/2006	KY	Building D
Santa Monica Bay Physicians 12524 W. Washington Boulevard Los Angeles, CA 90066	W14560	06/13/2006	CA	
Missouri Baptist Medical Center 3023 N. Ballas Road. St. Louis, MO 63141	260108	06/13/2006	MO	Suite 150, Building D
Radiology Associates of Tallahassee, PA 1600 Phillips Road Tallahassee, FL 32308	60	06/13/2006	FL	
Pacific Imaging-Oakland 3200 Telegraph Avenue Oakland, CA 94609	1265480099	06/13/2006	CA	
Medical Group of North County 5395 Ruffin Road, #202 San Diego, CA 92123	W11609	06/13/2006	CA	#202
Somerset Community Hospital 225 South Center Avenue Somerset, PA 15501	390039	06/13/2006	PA	

Elmbrook Memorial Hospital 19333 W. North Avenue Brookfield, WI 53045	520170	06/13/2006	WI	
San Luis Diagnostic Medical Associates 1100 Monterey Street San Luis Obispo, CA 93401	W14221	06/13/2006	CA	Suite 210
Cancer Care Centers of S.Texas, PA (New Braunfels) 1448 Common Street New Braunfels, TX 78130	00U40Q	06/13/2006	TX	
Cancer Care Centers of S.Texas, PA (San Antonio) 8109 Fredericksburg Road San Antonio, TX 78229	00U40Q	06/13/2006	TX	
Cancer Care Centers of S.Texas, PA (Kerrville) 694 Hill Country Drive Kerrville, TX 78028	00U40Q	06/13/2006	TX	
San Antonio Molecular Imaging SAMI 9102 Floyd Curl Drive San Antonio, TX 78240	FTN025	06/13/2006	TX	Suite 193
Pacific Medical Imaging and Oncology Center, Inc. 707 South Garfield Avenue Alhambra, CA 91801	W19267	06/13/2006	CA	Suite B-001
Northern IL Cancer Treatment Center 327 IL Route 2 Dixon, IL 61021	210699	06/13/2006	IL	
Cancer Care Center 2210 Green Valley Road New Albany, IN 47150	243690	06/13/2006	IN	Suite 1
Northeast Radiology 3839 Danbury Road Brewster, NY 10509	1134118607	06/13/2006	NY	

New England PET Imaging System 70 East Street Methuen, MA1844	M20762	06/13/2006	MA	
Southeast Texas PET Imaging 690 North 14th Street Beaumont, TX 77702	0004CC	06/13/2006	TX	
Sun City West PET Scan 14418 W. Meeker Boulevard Sun City West, AZ 85374	102496	06/13/2006	AZ	Suite 105
Butler Memorial Hospital 911 East Brady Street Butler, PA 16001	390168	06/13/2006	PA	
Diagnos, Inc., d.b.a. Diagnos PET/CT Imaging 2000 North Loop West Houston, TX 77018	ftnx11	06/13/2006	TX	Suite 100
Alliance Imaging-Washington Hospital 38950 Civic Center Drive Fremont, CA 94538	ZZZ28890Z	06/13/2006	CA	
Providence Saint Joseph Hospital 201 S. Buena Vista Street Burbank, CA 91505	50235	06/13/2006	CA	#125
Alliance Imaging-Centinela Freeman 333 Prairie Avenue Inglewood, CA 90301	TG281	06/13/2006	CA	
Alliance Imaging-Corona Regional Hospital 800 S. Main Street Corona, CA 91720	ZZZ23042Z	06/14/2006	CA	
Alliance Imaging-St. Mary's Regional Medical Center 235 W. 6th Street Reno, NV 89503	37860	06/14/2006	NV	235 W. 6th Street

Alliance Imaging-Downey Regional Medical Center 11500 Brookshire Avenue Downey, CA 90241	TG490	06/14/2006	CA	
Alliance Imaging-Visalia Medical Clinic 5400 W. Hillsdale Drive Visalia, CA 93291	ZZZ23046Z	06/14/2006	CA	
Alliance Imaging-Anaheim Memorial Medical Center 1111 W. La Palma Avenue Anaheim, CA 92801	TD017C	06/14/2006	CA	Anaheim Memorial Medical Center
Glendale Diagnostic Imaging Network Medical Office 403 South Glendale Avenue Glendale, CA 91205	W19100	06/14/2006	CA	
Advanced Imaging at Baybrook 11 Murray Street Glens Falls, NY 12801	33554a	06/14/2006	NY	
Elizabethtown Hematology-Oncology PLC 1107 Woodland Drive Elizabethtown, KY 42701	3638	06/14/2006	KY	Suite 105
Northern Arizona Radiology 77 W. Forest Avenue Suite 101 Flagstaff, AZ 86001	WCGJX	06/14/2006	AZ	
Suburban Imaging-Coon Rapids 8990 Springbrook Drive Suite 140 Coon Rapids, MN 55433	3087	06/14/2006	MN	
Covenant Medical Center 200 East Ridgeway Avenue Waterloo, IA 50702	421264647	06/14/2006	IA	

Mayo Clinic Rochester 10 3rd Avenue NW Rochester, MN 55905	1922074434	06/14/2006	MN	Charlton Building
Thousand Oaks Diagnostic Imaging Center 2180 Lynn Road Thousand Oaks, CA 91360	TP118	06/14/2006	CA	
InnerVision Advanced Medical Imaging 3801 Amelia Avenue Lafayette, IN 47905	167840	06/14/2006	IN	
UT-M. D. Anderson Cancer Center-PET Facility 1220 Holcombe Boulevard Houston, TX 77030	450076	06/14/2006	TX	ACB 6th Floor
Emory University Hospital 1364 Clifton Road, NE Atlanta, GA 30322	110010	06/14/2006	GA	Rm. E121 Nuclear Medicine/PET
Glendale MRI Institute 624 S. Central Avenue Glendale, CA 91204	HW9951	06/14/2006	CA	
Princeton Radiology 9 Centre Drive Jamesburg, NJ 08831	526492	06/14/2006	NJ	
Caromont Imaging Services 620 Summit Crossing Place Gastonia, NC 28054	340032	06/14/2006	NC	Suite 106
North Central Imaging 155 Sonterra Boulevard Suite 100 San Antonio, TX 78258	00867N	06/14/2006	TX	

Robert L. B. Tobin Diagnostic Imaging Center 7979 Wurzbach Drive Suite U113 San Antonio, TX 78229	00867N	06/14/2006	TX	
Edwards Comprehensive Cancer Center 1400 Hal Greer Boulevard Huntington, WV 25701	510055	06/14/2006	WV	
Home Hospital GLHS 2400 South Street Lafayette, IN 47904	150109	06/14/2006	IN	
St. Luke's North PET 153 Brodhead Road Bethlehem, PA 18017	390049	06/14/2006	PA	
Alamance Regional Medical Center 1240 Huffman Mill Road Burlington, NC 27216-0202	340070	06/14/2006	NC	PO Box 202
Verrazano Radiology 256 Mason Avenue Staten Island, NY 10305	1698	06/14/2006	NY	
Total Imaging Sun City 3862 Sun City Center Sun City Center, FL 33571	U4840	06/14/2006	FL	
Ortonville Area Health Services 450 Eastvold Avenue Ortonville, MN 56278	241342	06/14/2006	MN	
Merle West Medical Center 2865 Daggett Avenue Klamath Falls, OR 97601	380050	06/14/2006	OR	
Elite Imaging, LLC 2845 Aventura Boulevard Aventura, FL 33180	K3535	06/14/2006	FL	Suite 145

St. Mary Centralia 400 N. Pleasant Avenue Centralia, IL 62801	140034	06/14/2006	IL	
North Texas Regional Cancer Center 3705 W. 15th Street. Plano, TX 75075	00543K	06/14/2006	TX	
Centegra Health System 4201 Medical Center Drive McHenry, IL 60050	140116	06/14/2006	IL	
Boston Diagnostic Imaging 398 East Altamonte Drive Altamonte Springs, FL 32701	77022	06/14/2006	FL	
William W. Backus Hospital 326 Washington Street Norwich, CT 06360	70024	06/14/2006	CT	
NSMS-Sparta, IL 4253 Argosy Court Madison, WI 53714	208196	06/14/2006	WI	
LaPorte Hospital & Healthcare Services 1007 Lincolnway LaPorte, IN 46350	150006	06/14/2006	IN	
Skagit Valley Hospital 1415 E. Kincaid Street Mt.Vernon, WA 98273	500003	06/14/2006	WA	
Alliance Imaging-Fairfield Hospital 303 NW 11th Street Fairfield, IL 62837	213393	06/14/2006	IL	

Anderson Hospital 6800 State Route 162 Maryville, IL 62062	212761	06/14/2006	IL	
Alliance Imaging-Dean 1313 Fish Hatchery Road Madison, WI 53715	92170	06/14/2006	WI	
Alliance Imaging-Research 2316 E. Meyer Boulevard Kansas City, MO 64112	9004263A	06/14/2006	MO	
Alliance Imaging- St. Joseph 1000 Carondelet Drive Kansas City, MO 64114	9004263A	06/14/2006	MO	
Beebe Health Campus, d.b.a. Beebe Medical Center 18941 John J. Williams Highway Rehoboth, DE 19971	80007	06/14/2006	DE	
Medical Outsourcing Services, LLC 1200 Maple Road Joliet, IL 60432	211223	06/14/2006	IL	
Silver Spring Radiology 10801 Lockwood Drive Silver Spring, MD 20901	FDX009	06/14/2006	MD	STE 170
New England PET of Greater Lowell 295 Varnum Avenue Lowell, MA 01854	327080	06/14/2006	MA	
Stanford University 900A Blake Wilbur Drive Stanford, CA 94305	50441	06/14/2006	CA	
Medical Outsourcing, Services, LLC 3333 W. DeYoung Street Marion, IL 62959	211224	06/14/2006	IL	

Medical Outsourcing Services, LLC 1700 Clinton Street Muskegon, MI 49443	230066	06/14/2006	MI	
Medical Outsourcing Services, LLC 1001 Bellefontaine Avenue Lima, OH 45807	MEID02391	06/14/2006	OH	
Golf Diagnostic Imaging Center 9680 Golf Road Des Plaines, IL 60016	378810	06/14/2006	IL	
Medical Outsourcing Services, LLC 2816 South Ellis Avenue Chicago, IL 60616	211222	06/14/2006	IL	
Medical Outsourcing Services, LLC 1100 E. Norris Drive Ottawa, IL 61350	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC 111 E. Spring Street Streator, IL 61364	211224	06/14/2006	IL	
Mansfield Imaging Center 536 S. Trimble Road Mansfield, OH 44906	MAD10921	06/14/2006	OH	Suite A
Manhattan Diagnostic Radiology 400 East 66th Street New York, NY 10021	W23211	06/14/2006	NY	
Riverside Walter Reed Hospital 7519 Hospital Drive Gloucester, VA 23061	490130	06/14/2006	VA	
Good Shepherd Hospital 450 West Highway 22 Barrington, IL 60010	140291	06/14/2006	IL	

Alliance Imaging-Presbyterian Intercomm Hospital 12401 Washington Boulevard Whittier, CA 90602	TG281A	06/14/2006	CA	Presbyterian Intercommunity Hospital
Altru Hospital 1200 S. Columbia Road. Grand Forks, ND 58201	350019	06/14/2006	ND	
Mid American Imaging-Union Hospital 659 Boulevard Street Dover, OH 44622	ID00805	06/14/2006	OH	
Gundersen Clinic 1900 South Avenue Lacrosse, WI 54601	34217	06/14/2006	WI	
University of Minnesota Medical Center, Fairview 500 Harvard Street, SE Box 292 Minneapolis, MN 55455	C02390	06/14/2006	MN	
The Christ Hospital 2139 Auburn Avenue Cincinnati, OH 45219	360163	06/14/2006	OH	
West Michigan Cancer Center 200 N. Park Street Kalamazoo, MI 49007	0N66660	06/14/2006	MI	
Cyrus Diagnostic Imaging, Inc. 165 Waymont Court Lake Mary, FL 32746	40586	06/14/2006	FL	
Cancer Centers of Florida 1561 West Fairbanks Avenue Winter Park, FL 32789	K1833	06/14/2006	FL	

Cedars-Sinai Medical Center Adler-Nail PET Center 8700 Beverly Boulevard Los Angeles, CA 90048	951644600	06/14/2006	CA	S. Mark Taper Foundation Imaging Center
Cancer Centers of Florida 52 West Gore Street Orlando, FL 32806	K1833	06/14/2006	FL	
Cancer Centers of Florida 1111 Blackwood Avenue Ocoee, FL 34761	K1833	06/14/2006	FL	
Mt. Clemens Regional Medical Center 1000 Harrington Street Mt. Clemens, MI 48043	230227	06/14/2006	MI	
Truxtun Radiology Medical Group, LP 1818 16th Street Bakersfield, CA 93301	ZZZ25213Z	06/14/2006	CA	
Medical Outsourcing Services, LLC 1515 North Madison Avenue Anderson, IN 46011	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC 1215 Franciscan Drive Litchfield, IL 62056	211224	06/14/2006	IL	
Piedmont Medical Center 1968 Peachtree Road, NW Atlanta, GA 30305	110083	06/14/2006	GA	
Medical Outsourcing Services, LLC 1400 West Park Street Urbana, IL 61801	211224	06/14/2006	IL	

Central Indiana PET, LLC 8301 Harcourt Road Suite 100 Indianapolis, IN 46260	201930	06/14/2006	IN	
Medical Outsourcing Services, LLC 812 North Logan Avenue Danville, IL 61832	211224	06/14/2006	IL	
Queens Medical Imaging, PC 69-15 Austin Street Forest Hills, NY 11375	1023011285	06/14/2006	NY	
NYOH PET/CT Imaging 43 New Scotland Avenue Albany, NY 12208	56917A	06/14/2006	NY	
Conroe Regional Medical Center 504 Medical Center Boulevard Conroe, TX 77304	450222	06/14/2006	TX	
Northeast Georgia Health System, Inc. Northeast Georgia Medical Center; 743 Spring Street Gainesville, GA 30501	110029	06/14/2006	GA	
Texas Oncology, PA-Mckinney 4510 Medical Center Drive Mckinney, TX 75069	00543K	06/14/2006	TX	#215

Medical Outsourcing Services, LLC 7150 Clearwater Drive Indianapolis, IN 46256	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC 1402 East County Line Road Indianapolis, IN 46227	223260	06/14/2006	IN	
Texas Cancer Center-Sherman 2800 Highway 75 North Sherman, TX 75090	00543K	06/14/2006	TX	
Medical Outsourcing Services, LLC 120 Ralston Avenue Defiance, OH 43512	MEID02391	06/14/2006	OH	
Medical Outsourcing Services, LLC 2400 N. Rockton Avenue Rockford, IL 61103	211224	06/14/2006	IL	
Arlington Cancer Center 906 W. Randol Mill Road Arlington, TX 76012	00LK20	06/14/2006	TX	
Jupiter Medical Center 2055 Military Trail Jupiter, FL 33458	100253	06/14/2006	FL	
Cheyenne Radiology Group and MRI, PC 2003 Bluegrass Circle Cheyenne, WY 82009	W309142	06/14/2006	WY	
Hunterdon Imaging, PA 2100 Wescott Drive MRI Suite Flemington, NJ 08822	714119	06/14/2006	NJ	

Medical Outsourcing Services, LLC 200 Berteau Avenue Elmhurst, IL 60126	211223	06/14/2006	IL	
Magnolia Regional Center 611 Alcorn Drive Corinth, MS 38834	250009	06/14/2006	MS	
Monroe Clinic 515 22nd Avenue Monroe, WI 53566	520028	06/14/2006	WI	
Jupiter Hematology-Oncology Associates 345 Jupiter Lakes Boulevard Jupiter, FL 33458	34922	06/14/2006	FL	Ste.100
Southwest Regional Cancer Center 901 West 38th Street Austin, TX 78705	0080BY	06/14/2006	TX	
Positron Imaging Of Austin 6101 Balcones Drive Austin, TX 78731	00538K	06/14/2006	TX	
Southern Ocean County Hospital 1140 Route 72 West Manahawkin, NJ 08050	310113	06/14/2006	NJ	Radiology
Medical Outsourcing Services, LLC 9830 S. Ridgeland Road Chicago Ridge, IL 60145	211222	06/14/2006	IL	
Medical Outsourcing Services, LLC 430 West Votaw Street Portland, IN 47374	223260	06/14/2006	IN	

Saint Agnes Medical Center 1303 E. Herndon Avenue Fresno, CA 93720	50093	06/14/2006	CA	
Central Physicians Imaging 100 Southland Drive Lexington, KY 40503	9375001	06/14/2006	KY	Suite B
NEA Medical Center 3024 Stadium Boulevard Jonesboro, AR 72401	1386699353	06/14/2006	AR	
Northgate Medical Imaging, LLC 807 Northgate Boulevard New Albany, IN 47150	1205894235	06/14/2006	IN	
Ball Memorial Hospital 2401 University Avenue Muncie, IN 47303	150089	06/14/2006	IN	
The MRI Center 5200 Harroun Road Sylvania, OH 43560	360074	06/14/2006	OH	Flower Hospital
St. Joseph Regional Health Center 2801 Franciscan Drive Bryan, TX 77802	450011	06/14/2006	TX	
Steinberg Diagnostic (SDMI) 2850 Siena Heights Henderson, NV 89052	WCHCC	06/14/2006	NV	
Raritan Bay Medical Center 1 Hospital Plaza Old Bridge, NJ 08857	310039	06/14/2006	NJ	
MRI Center-St. Anne Mercy Hospital 3404 W. Sylvania Avenue Toledo, OH 43623	360262	06/14/2006	OH	

MRI Center-St. Charles Mercy Hospital 2600 Navarre Avenue Oregon, OH 43616	360081	06/14/2006	OH	
MRI Center-St. Luke's Hospital 2901 Monclova Road Maumee, OH 43537	360090	06/14/2006	OH	
MRI Center-St. Vincent Medical Center 2213 Cherry Street Toledo, OH 43608	360112	06/14/2006	OH	
MRI Center- Toledo Hospital 2142 N. Cove Boulevard Toledo, OH 43606	360068	06/14/2006	OH	
McAlester Regional Health Center One Clark Bass Boulevard McAlester, OK 74501	370034	06/14/2006	OK	
Express Imaging Center, Ltd. 1987 West Fourth Street Mansfield, OH 44906	9299151	06/14/2006	OH	Suite A
Mercy Regional Medical Center 375 East Park Avenue Durango, CO 81301	60013	06/14/2006	CO	
Texas Oncology-Longview Cancer Center PET 1300 N. Fourth Street Longviews, TX 75601	00T35E	06/14/2006	TX	
UNC Hospitals 101 Manning Drive Chapel Hill, NC 27514	3400610	06/14/2006	NC	PET Department. Basement W/C Hospital

DeKalb Medical Center-Diagnostic Imaging Center 2701 North Decatur Road Decatur, GA 30033	110076	06/14/2006	GA	
Long Island Pet Imaging 6 Ohio Drive Lake Success, NY 11042	W4921	06/14/2006	NY	Suite 101
Vanderbilt University Medical Center 1161 21st Avenue South Nashville, TN 37232	3284867	06/14/2006	TN	Building 1251 RRB
Medical Outsourcing Services, LLC 1800 E. Lakeshore Drive Decatur, IL 62521	211224	06/14/2006	IL	
New York PET and CTA Imaging Center 7404 5th Avenue Brooklyn, NY 11209	1083680003	06/14/2006	NY	
Mercy Medical Center-North Iowa 1000 4th Street SW Mason City, IA 50401	160064	06/14/2006	IA	
Lawrence and Memorial Hospital 365 Motauk Avenue New London, CT 06320	70007	06/14/2006	CT	
Superior Medical Diagnostics II, LLC 235 Franklin Avenue Nutley, NJ 07110	68423	06/14/2006	NJ	
Oncology Specialists, S.C. 7900 N. Milwaukee Avenue Niles, IL 60714	587940	06/14/2006	IL	Suite 16

Hahnemann University Hospital Broad & Vine, MS300 Philadelphia, PA 19102	390290	06/14/2006	PA	
Shrewsbury Diagnostic Imaging, LLC 1131 Broad Street Shrewsbury, NJ 07702	24021	06/14/2006	NJ	Suite 110
Medical Outsourcing Services, LLC 500 West Court Street Kankakee, IL 60901	211224	06/14/2006	IL	
Forsyth Medical Center 3333 Silas Creek Parkway Winston Salem, NC 27103	3400014	06/14/2006	NC	
Medical Outsourcing Services, LLC 500 John Deere Road Moline, IL 61265	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC 836 W. Wellington Avenue Chicago, IL 60657	211222	06/14/2006	IL	
Medical Outsourcing Services, LLC 1600 West Walnut Jacksonville, IL 62650	211224	06/14/2006	IL	
Medical Outsourcing Services, LLC 1600 23rd Street Bedford, IN 47471	223260	06/14/2006	IN	
Medical Outsourcing Services, LLC 1500 North Ritter Avenue Indianapolis, IN 46219	223260	06/14/2006	IN	

Medical Outsourcing Services, LLC 1221 N. Highland Aurora, IL 60506	211223	06/14/2006	IL	
Medical Outsourcing Services, LLC 1000 Lincoln Health Center Drive Mattoon, IL 61938	211224	06/14/2006	IL	
Salinas Valley Memorial Healthcare System 450 E. Romie Lane Salinas, CA 93901	50334	06/14/2006	CA	
Bridgeport Hospital 267 Grant Street Bridgeport, CT 06610	70010	06/14/2006	CT	
MRIGP, Inc., d.b.a. Advanced Medical Imaging Diamond H. 2490 W 26th Avenue Suite 20A Denver, CO 80211	H8808	06/14/2006	CO	
RCHO PET Imaging 5120 Belfort Boulevard Suite 130 Jacksonville, FL 32256	40259	06/14/2006	FL	
Presbyterian Hospital 200 Hawthorne Lane Charlotte, NC 28204	560554230	06/14/2006	NC	
Eisenhower Imaging Center 39000 Bob Hope Drive Rancho Mirage, CA 92210	ZZZ91572Z	06/14/2006	CA	Lower Level Lucy Curci Cancer Center
Mississippi Baptist Medical Center 501 Marshall Street Jackson, MS 39202	250102	06/14/2006	MS	

Texas Oncology-South Texas Cancer Center 2121 Pease Street Suite 101 Harlingen, TX 78550	14041756	06/14/2006	TX	Texas Oncology-South Texas Cancer Center
Valley Radiologists, Ltd.-Paseo II Office 5605 W. Eugie Avenue Suite 110 Glendale, AZ 85304	WCFHS	06/14/2006	AZ	
Good Samaritan Hospital 400 15th Avenue SE Puyallup, WA 98372	500079	06/14/2006	WA	
St. John's Mercy Hospital 851 5th Street Washington, MO 63090	260052	06/14/2006	MO	
Memorial Hermann The Woodlands OPID 9200 Pinecroft Drive Suite 100 The Woodlands, TX 77380	741152597	07/14/2006	TX	
St. Luke's Hospital 232 South Wood's Mill Road Chesterfield, MO 63017	260179	07/14/2006	MO	
Lake Vista Cancer Center 2790 Lake Vista Drive Lewisville, TX 75067	00543K	07/14/2006	TX	
Palms Imaging Medical Group, Inc. 1901 Outlet Center Drive Oxnard, CA 93036	W19564	07/14/2006	CA	
Houston Medical Imaging, LLC 3310 Richmond Avenue Houston, TX 77006	00137K	07/14/2006	TX	

Alliance Imaging-West Anaheim Medical Center 3033 W. Orange Avenue Anaheim, CA 92804	TD017	07/14/2006	CA	
Winthrop PET Imaging Center 222 Station Plaza North Suite 140 Mineola, NY 11501	330167	07/14/2006	NY	
Greenville Hospital System University Medical Center 701 Grove Road Greenville, SC 29605	420078	07/14/2006	SC	
High Field Open MRI 1895 Jefferson Road Rices Landing, PA 15357	7885	07/14/2006	PA	
PET/CT Center at St. Anthony's POB 1201 5th Avenue North St. Petersburg, FL 33705	E5753	07/14/2006	FL	Suite 100
Texas Oncology-Deke Slayton Cancer Center 501 Medical Center Webster, TX 77598	00t40e	07/14/2006	TX	
Invision North Florida Outpatient Imaging Center 6605 NW 9th Boulevard Gainesville, FL 32609	E4639	07/14/2006	FL	
Memorial Hospital of Union County 500 London Avenue Marysville, OH 43040	360092	07/14/2006	OH	
Texas Oncology/South Texas Cancer Center-McAllen 1901 S. 2nd Street McAllen, TX 78503	00N39J	07/14/2006	TX	

Baylor Medical Center at Irving 1901 North MacArthur Boulevard Irving, TX 75061	450079	07/14/2006	TX	
Providence Park Hospital 47601 Grand River Avenue Novi, MI 48374	230019	07/14/2006	MI	
Texas Oncology-Abilene 1957 Antilley Road Abilene, TX 79606	140414748	07/14/2006	TX	
St. Anthony Hospital 1000 North Lee Street Oklahoma City, OK 73101	370037	07/14/2006	OK	
Rice Memorial Hospital 301 Becker Avenue SW Willmar, MN 56201	240088	07/14/2006	MN	
LDS Hospital Nuclear Medicine 8th Avenue & C Street Salt Lake City, UT 84143	460010	07/14/2006	UT	
RMG First & Laurel Imaging Center 2466 First Avenue San Diego, CA 92101	W14057	07/14/2006	CA	
RMG Gardenview Imaging Center 1200 Gardenview Road Encinitas, CA 92024	W14057F	07/14/2006	CA	Suite 110
Decatur County Memorial Hospital 720 North Lincoln Street Greensburg, IN 47240	150062	07/14/2006	IN	
Midland Imaging Center 5001 Andrews Highway Midland, TX 79703	00U75H	07/14/2006	TX	

Advanced Imaging, LLC 3433 NW 56th C-10 Oklahoma City, OK 73112	400522379	07/14/2006	OK	
University of Iowa Hospitals and Clinics 200 Hawkins Drive Iowa City, IA 52242	160058	07/14/2006	IA	
AZ Oncology Associates PET/CT & CT Imaging Center 2070 W. Rudasill Road Tucson, AZ 85704	25291	07/14/2006	AZ	Suite 110
Medical Diagnostic Imaging 14 Raymond Avenue Poughkeepsie, NY 12603	EEN841	07/14/2006	NY	
Shore Memorial Hospital 10085 William F. Bernart Circle Nassawadox, VA 23413	540560500	07/14/2006	VA	
Deaconess Hospital 600 Mary Street Evansville, IN 47747	150082	07/14/2006	IN	
Great Neck Imaging, PC 907 Northern Boulevard Great Neck, NY 11021	1487646311	07/14/2006	NY	
FMH Rose Hill 1562 Opossumtown Pike Frederick, MD 21702	KP72	07/14/2006	MD	
Oakwood Annapolis Hospital 33155 Annapolis Road Wayne, MI 48184	230142	07/14/2006	MI	
The Regional Cancer Center 2500 West 12th Street Erie, PA 16505	140052	07/14/2006	PA	
Meritcare Hospital 801 North Broadway Fargo, ND 58122	350011	07/14/2006	ND	

Community Hospitals and Wellness Centers 433 W. High Street Bryan, OH 43506	360121	07/14/2006	OH	
Sacred Heart Hospital 900 W. Clairemont Avenue Eau Claire, WI 54701	520013	07/14/2006	WI	
Via Radiology-Meridian Pavilion 11011 Meridian Avenue North #101 Seattle, WA 98133	8859612	07/14/2006	WA	
Medical Outsourcing Services, LLC 2200 Market Street Charlestown, IN 47111	223260	07/14/2006	IN	
Allegheny General Hospital 320 East North Avenue Pittsburgh, PA 15232	60503	07/14/2006	PA	Division of Nuclear Medicine
Texas Oncology-12th Avenue 1001 W. 12th Avenue Fort Worth, TX 76104	00R66C	07/14/2006	TX	
Southwest Fort Worth Cancer Center 6500 Harris Parkway Fort Worth, TX 76132	00R66C	07/14/2006	TX	
St. Rita's Medical Center 730 W. Market Street Lima, OH 45801	360066	07/14/2006	OH	
New Mexico Oncology Hematology Consultants, Ltd. 4901 Lang Avenue NE Albuquerque, NM 87109	850367056	07/14/2006	NM	
Emory Eastside Medical Center 545 Old Norcross Road Lawrenceville, GA 30045	110192	07/14/2006	GA	Suite 200

Riverside Regional Medical Center 500 J. Clyde Morris Boulevard Newport News, VA 23601	490052	07/14/2006	VA	
Connecticut Oncology & Hematology 220 Kennedy Drive Torrington, CT 06790	C00633	07/14/2006	CT	
Chilton Memorial Hospital 97 West Parkway Pompton Plains, NJ 07444	310017	07/14/2006	NJ	
Riverside Diagnostic Center Williamsburg 120 Kings Way Williamsburg, VA 23188	490052	07/14/2006	VA	
Lawrence County MRI & Diagnostic Imaging Center 2526 Wilmington Road New Castle, PA 16105	68617	07/14/2006	PA	
Joint Township District Memorial Hospital 200 St. Clair Street Saint Marys, OH 45885	360032	07/14/2005	OH	
Radiation Therapy Regional Centers 3680 Broadway Fort Myers, FL 33901	77215	07/14/2006	FL	
Graduate Hospital 1800 Lombard Street Philadelphia, PA 19146	390285	07/14/2006	PA	One Graduate Hospital
Columbia Diagnostic Center 1111 Paulison Avenue Clifton, NJ 07015	94729	07/14/2006	NJ	
The Nebraska Medical Center 4250 Dewey Avenue Omaha, NE 68113	280013	07/14/2006	NE	

Memorial Hermann Memorial City OPID 925 Gessner Road Houston, TX 77024	741152597	07/14/2006	TX	
Clifton Springs Hospital and Clinic 2 Coulter Road Clifton Springs, NY 14432	330265	07/14/2006	NY	
Monongalia General Hospital 1200 J. D. Anderson Drive Morgantown, WV 26505	510024	07/14/2006	WV	Monongalia General Hospital
Providence Portland Medical Center 4805 NE Glisan Street Portland, OR 97213	380061	07/14/2006	OR	
Highfield Open MRI, Inc. 995 GreenTree Road Pittsburgh, PA 15220	7885	07/14/2006	PA	
Providence St. Vincent Medical Center 9205 SW Barnes Road Portland, OR 97225	380004	07/14/2006	OR	
Conway Regional Imaging Center 2120 Robinson Avenue Conway, AR 72034	40029	07/14/2006	AR	
Martin Memorial Medical Center 300 Hospital Avenue Stuart, FL 34994	100044	07/14/2006	FL	
Northwest Medical Foundation of Tillamook 1000 Third Street Tillamook, OR 97141	381317	07/14/2006	OR	Tillamook County General Hospital
O'Connor Hospital 2105 Forest Avenue San Jose, CA 95128-1471	50153	07/14/2006	CA	

Midtown Imaging, LLC-Wellington 440 N. State Road 7 Wellington, FL 33411	E9133	07/14/2006	FL	
Midtown Imaging, LLC-Jupiter 345 Jupiter Lakes Boulevard Jupiter, FL 33458	E9133	07/14/2006	FL	Suite 100
MMI/Mid Coast Hospital 51 US Route 1 Scarborough, ME 04074	327079	07/14/2006	ME	Suite O
Molecular Imaging Institute 5349 Commerce Boulevard Crown Point, IN 46307	192870	07/14/2006	IN	
RCOA Imaging Services 11937 US Highway 271 Tyler, TX 75708	FTN022	07/14/2006	TX	
MMI/Maine Medical Center 51 US Route 1 Scarborough, ME 4074	327079	07/14/2006	ME	Suite O
Radiology, Ltd. 4640 East Camp Lowell Drive Tucson, AZ 85712	WCBBM	07/14/2006	AZ	
Intermed Oncology Associates, S.C. 6701 159th Street Tinley Park, IL 60477	610860	07/14/2006	IL	
Lakes Radiology 450 Canisteo Street Hornell, NY 14843	1710937727	07/14/2006	NY	
Opelousas PET/CT Imaging Center 3975 I-49 South Service Road Suite 100 Opelousas, LA 70570	5DA11	07/14/2006	LA	

Florida Cancer Institute-BRK 7154 Medical Center Drive Spring Hill, FL 34608	1427017326	08/07/2006	FL	
Capital Health System 446 Belleview Avenue Trenton, NJ 08618	310044	08/07/2006	NJ	
Hudson Valley Diagnostic Imaging, PLLC 575 Hudson Valley Avenue New Windsor, NY 12553	WBH241	08/07/2006	NY	
St Joseph's Hospital 3200 Pleasant Valley Road West Bend, WI 53095	520063	08/07/2006	WI	
Atlantic Medical Imaging 30 East Maryland Avenue Somers Point, NJ 08244	101024	08/07/2006	NJ	
Providence Imaging Center 3340 Providence Drive Anchorage, AK 99508	2085R0202X	08/07/2006	AK	
Rochester Radiology Associates, PC 1277 Portland Avenue Rochester, NY 14621	199726	08/07/2006	NY	
Melbourne Internal Medicine Associates 1132 South Hickory Street Melbourne, FL 32901	77167	08/07/2006	FL	
Highline Imaging, LLC 275 SW 160th Street Seattle, WA 98166	8801784	08/07/2006	WA	
Tyler PET 415 South Fleishel Avenue Tyler, TX 75702	752131429	08/07/2006	TX	
Lake City Medical Center 340 NW Commerce Drive Lake City, FL 32055	100156	08/07/2006	FL	

Blount Memorial Hospital 907 East Lamar Alexander Boulevard Maryville, TN 37804	440011	08/07/2006	TN	
Texas Cancer Center Mesquite 4700 North Galloway Mesquite, TX 75150	R339	08/07/2006	TX	
Rutland Regional Medical Center: Diagnostic Imaging 160 Allen Street Rutland, VT 05701	470005	08/07/2006	VT	
MDMED, Inc. 155 Calle Portal Suite 700 Sierra Vista, AZ 85635	Z68496	08/07/2006	AZ	
Atlantic Medical Imaging Wall Township 2399 North Highway 34 Manasquan, NJ 08736	101024	08/07/2006	NJ	Ramshorn Executive Centre Bldg B
Newport Imaging Center 455 Old Newport Road Suite 101 Newport Beach, CA 92660	W10829	08/07/2006	CA	
Cancer Care and Hematology Specialists(CCHSC) 8915 West Golf Road Niles, IL 60714-05825	355030	08/07/2006	IL	
Hematology Oncology Associates of Illinois (HOAI) 715 West North Avenue Melrose Park, IL 60160	218860	08/07/2006	IL	
Princeton Community Hospital 122 12th Street Ext Princeton, WV 24740	510046	08/07/2006	WV	PO Box 1369
TRICAT, LLC at Edison 3830 Park Avenue Edison, NJ 08820	27193	08/07/2006	NJ	Suite 102

Olathe Medical Center 20333 W. 151st Street Olathe, KS 66061	170049	08/07/2006	KS	
St. Joseph Hospital 1140 West La Veta Avenue Orange, CA 92868	50069	08/07/2006	CA	2nd Floor Nuclear Medicine
Baptist Health Medical Center 9601 I630, Exit 7 Little Rock, AR 72205-7299	40114	08/07/2006	AR	
Florida Cancer Specialists 3840 Broadway Fort Myers, FL 33901	1225064520	08/07/2006	FL	
Pacca PET Imaging 5210 Belfort Road Suite 130 Jacksonville, FL 32256	37572	08/07/2006	FL	
National PET Scan Palm Beach, LLC 16110 Jog Road Delray Beach, FL 33484	1164452405	08/07/2006	FL	Suite 200
Central Memphis Regional PET Imaging Center, LLC 1388 Madison Avenue Memphis, TN 38104	1295719110	08/07/2006	TN	
Johnston Memorial Hospital 351 Court Street NE Abingdon, VA 24210	490053	08/07/2006	VA	
Lenox Hill Hospital 100 East 77th Street New York, NY 10021	131624070	08/07/2006	NY	
Mercy Medical Center 411 Laurel Street Suite 2310 Des Moines, IA 50314	160083	08/07/2006	IA	

New Orleans Regional PET Center, LLC 3434 Prytania Street Suite 120 New Orleans, LA 70115	1538143474	08/07/2006	LA	
Indiana Regional Medical Center PET Imaging 835 Hospital Road Indiana, PA 15701	390173	08/07/2006	PA	PO Box 788
Mid American-Defiance Clinic 1400 E. Second Street Defiance, OH 43512	ID00809	08/07/2006	OH	
Total Imaging Robertson 737 West Brandon Boulevard Brandon, FL 33511	k7282	08/07/2006	FL	
New Tampa Imaging Center 14302 N. Bruce B. Downs Boulevard Tampa, FL 33613	k57209	08/07/2006	FL	
Summit Imaging 12037 Cortez Boulevard Brooksville, FL 34613	40986	08/08/2006	FL	
University of NM Cancer Research & Treatment Center 900 Caminodey Salud NE Albuquerque, NM 87131	400521103	08/08/2006	NM	

Alliance Imaging-Los Alamitos Med Center 3751 Katella Avenue Los Alamitos, CA 90720	TD017	08/08/2006	CA	
NYU Clinical Cancer Center, Diagnostic Imaging 160 E. 34th Street New York, NY 10016	W1L361	08/08/2006	NY	2nd Floor
Margaret Mary Community Hospital 321 Mitchell Avenue Batesville, IN 47006	151329	08/08/2006	IN	
Quantum PET-Apple Hill 37 Monument Road York, PA 17403	40635	08/08/2006	PA	
Memorial Hospital 1204 N. Mound Street Nacogdoches, TX 75961	450508	08/08/2006	TX	
BMH-DeSoto 7601 Southcrest Parkway Southaven, MS 38671	250141	08/08/2006	MS	
Riverside Medical Center 300 Bourbonnais Campus Bourbonnais, IL 60914	140186	08/08/2006	IL	Riverside Medical Center

UCSD Center for Molecular Imaging 11388 Sorrento Valley Road Suite 100 San Diego, CA 92121	TG302	08/08/2006	CA	
Imaging Partners at Valley, LLC 400 South 43rd Street Renton, WA 98055	AB38657	08/08/2006	WA	Olympic Building
El Paso Cancer Treatment Center 7848 Gateway East Boulevard El Paso, TX 79915	00543K	08/08/2006	TX	
Desert Radiologists 3930 S. Eastern Avenue Las Vegas, NV 89119	VWCCBT	08/08/2006	NV	
Saint Joseph Hospital 2900 North Lake Shore Drive Chicago, IL 60068	140224	08/08/2006	IL	
Midstate Medical Center 435 Lewis Avenue Meriden, CT 06451	60646715	08/08/2006	VT	
Brookville Hospital 100 Hospital Road Brookville, PA 15825	391312	08/08/2006	PA	
Suntree Diagnostic Center 6300 N. Wickham Road Suite 101 Melbourne, FL 32940	701	08/08/2006	FL	
Virginia Mason Medical Center 1100 Ninth Avenue Seattle, WA 98101	500005	08/08/2006	WA	

Van Wert County Hospital 1250 South Washington Street Van Wert, OH 45891	360071	08/08/2006	OH	
Manhasset Diagnostic Imaging, PC 1350 Northern Boulevard 2nd Floor Manhasset, NY 11030	W14841	08/08/2006	NY	
Southern New Mexico Cancer Center 150 Road Runner Parkway Las Cruces, NM 88011	752131429	08/08/2006	NM	
Davis Memorial Hospital Gorman Avenue and Reed Street Elkins, WV 26241	510030	08/08/2006	WV	Gorman Avenue
Advocate Good Samaritan Hospital 3815 Highland Avenue Downers Grove, IL 60515	140288	08/08/2006	IL	
Benefis Healthcare 1101 26th Street South Great Falls, MT 59405	270012	08/08/2006	MT	
Fort Walton Beach Medical Center 1032 Mar Walt Drive Fort Walton Beach, FL 32547	100223	08/08/2006	FL	
Blessing Hospital PO Box #7005 Quincy, IL 62305	140015	08/08/2006	IL	
Alliance Imaging-Allen County Hospital 101 South 1st Street Iola, KS 53808	130656	08/08/2006	KS	

Florida Cancer Institute-NPR 8763 River Crossing Boulevard New Port Richey, FL 34655	1427017326	08/08/2006	FL	
Kimball Medical Center 600 River Avenue Lakewood, NJ 08701	315084	08/08/2006	NJ	
Radiology Imaging Associates at Heritage 8926 Woodyard Road Clinton, MD 20735	521454775	08/08/2006	MD	Suite 502
Immanuel Medical Center 6901 North 72nd Street Omaha, NE 68122	280081	08/08/2006	NE	
North Fork Radiology 1333 Roanoke Avenue Riverhead, NY 11901	w11401	08/08/2006	NY	
South County PET Imaging, LLC 10010 Kennerly Road St. Louis, MO 63128	93053	08/08/2006	MO	
Carolinas Hospital System 805 Pamplico Highway Florence, SC 29505	621587267	08/08/2006	SC	
Radiology Associates of San Luis Obispo 522 E. Plaza Drive Santa Maria, CA 93454	GR0009774	08/08/2006	CA	

Florida Cancer Specialists-Port Charlotte 22395 Edgewater Drive Port Charlotte, FL 33980	1225064520	08/08/2006	FL	
Florida Cancer Specialists-Venice 901 South Tamiami Trail Venice, FL 34285	1225064520	08/08/2006	FL	
Florida Cancer Specialists-Bradenton 6001 21st Avenue West Bradenton, FL 34209	1225064520	08/08/2006	FL	
Nebraska Methodist Hospital 8303 Dodge Street Omaha, NE 68114	280040	08/08/2006	NE	
PET/CT Center of Richardson 399 Melrose Drive Richardson, TX 75080	1740207539	08/08/2006	TX	Suite A
Molecular Imaging at Sequoia Imaging Center 4949 W. Cypress Avenue Visalia, CA 93277	ZZZ27463Z	08/08/2006	CA	
Central Jersey Radiologists 2128 Kings Highway Oakhurst, NJ 07755	527995	08/08/2006	NJ	
Claxton-Hepburn Medical Center 214 King Street Ogdensburg, NY 13669	330211	08/08/2006	NY	
Memorial Hermann Southeast 11800 Astoria Boulevard Houston, TX 77089	741152597	08/08/2006	TX	

NSMS-Pine Bluff, AR 4253 Argosy Court Madison, WI 53714	5f168	08/08/2006	WI	
Yuma Regional Medical Center 2400 S. Avenue A Yuma, AZ 85364	866007596	08/08/2006	AZ	
Carle Clinic 1702 S. Mattis Avenue Champagne, IL 61820	371188284	08/08/2006	IL	
North Shore-LIJ Center for Advanced Medicine 450 Lakeville Road Lake Success, NY 11042	330106	08/08/2006	NY	North Shore-LIJ Center for Advanced Medicine Diagnostic Imaging Center
McAlester Diagnostic Imaging 10 South Third Street McAlester, OK 74501	1760411540	08/08/2006	OK	Suite 100
California Imaging Institute 1867 E. Fir Avenue Fresno, CA 93720	ZZZ03565Z	08/08/2006	CA	
Bon Secours Memorial Regional Medical Center 8260 Atlee Road Mechanicsville, VA 23116	541744931	08/08/2006	VA	
University of Maryland Medical Center 22 S. Greene Street Gudelksy 2nd Floor Baltimore, MD 21201	210002	08/08/2006	MD	Division of Nuclear Medicine
Bixby Medical Center 818 Riverside Avenue Adrian, MI 49221	230005	08/08/2006	MI	

Kern Radiology Medical Group 2301 Bahamas Drive Bakersfield, CA 93309	1720023997	08/08/2006	CA	
Bon Secours St. Francis Medical Center 13710 St. Francis Boulevard Midlothian, VA 23114	311716973	08/08/2006	VA	
MMI/Maine General Waterville 51 US Route 1 Scarborough, ME 04074	327079	08/08/2006	ME	Suite O
Mount Adams Imaging Center 3911 Castlevale Road Yakimaw, WA 98902	8857843	08/08/2006	WA	
Carilion Roanoke Memorial Hospital 2001 Crystal Spring Avenue Roanoke, VA 24014	490024	08/08/2006	VA	
Seton Medical Center; Nuclear Medicine Dept. 1900 Sullivan Avenue Daly City, CA 94015-2229	50289	08/08/2006	CA	
Arnett Imaging Center 2403 Loy Drive Lafayette, IN 47909	224390	08/08/2006	IN	
Advanced Diagnostic Imaging, PC 1120 Professional Boulevard Evansville, IN 47630	639970	08/08/2006	IN	
Queen of Peace Hospital 301 Second Street NE New Prague, MN 56071	241361	08/08/2006	MN	

Agnesian Health Care 430 E. Division Street Fond du Lac, WI 54935	520088	08/08/2006	WI	
ACMH Hospital One Nolte Drive Kittanning, PA 16201	390163	08/08/2006	PA	
Wilshire Oncology Medical Group, Inc. 1280 Corona Pointe Court Corona, CA 92879	zzz19568z	08/08/2006	CA	Suite 112
United Radiology-Laurel 14201 Laurel Park Drive Laurel, MD 20707	2.01558E+11	08/08/2006	MD	Suite 208
Bay Area Medical Center 3100 Shore Drive Marinette, WI 54143	520113	08/08/2006	WI	
Penn State Milton S. Hershey Medical Center 500 University Drive Hershey, PA, 17033	251854772	08/08/2006	PA	HG380
Delta St. Joseph's MRI, LLC 1617 N. California Street Stockton, CA 95204	ZZZ19725Z	08/08/2006	CA	Suites 1A and 1B
United Radiology: Bowie 16701 Melford Boulevard Bowie, MD 20715	2.01558E+11	08/08/2006	MD	
United Radiology Gaithersburg 702 Russell Avenue Gaithersburg, MD 20877	2.01558E+11	08/08/2006	MD	

United Radiology Olney 18120 Hillcrest Drive Olney, MD 20832	2.01558E+11	08/08/2006	MD	Suite A
FCS/Axcess Diagnosis/Sarasota 600 N. Cattleman Road Sarasota, FL 34232	1225064520	08/08/2006	FL	
NSMS-Greenville, IL 4253 Argosy Court Madison, WI 53714	208196	08/08/2006	WI	
FCS/Axcess Diagnosis/Venice 842 Sunset Lake Boulevard Venice, FL 34292	1225064520	08/08/2006	FL	Suite #301
Leading Edge Radiation 8715 5th Avenue Brooklyn, NY 11209	WEM111	09/05/2006	NY	
Rena Tarbet Cancer Center 4201 Medical Center Drive Suite 180 McKinney, TX 75069	oow753	09/05/2006	TX	
McLaughlin & Marte, M.D, LLP 3850 Tampa Road Suite 202 Palm Harbor, FL 34684	1003862079	09/05/2006	FL	
BryanLGH Medical Center 2300 South 16th Street Lincoln, NE 68502	280003	09/05/2006	NE	

Freehold MR Associates 691 West Main Street Freehold, NJ 07728	405856	09/05/2006	NJ	
Franciscan Skemp Healthcare 700 West Avenue South La Crosse, WI 54601	520004	09/05/2006	WI	
Teton Radiology 2001 S. Woodruff Suite 17 Idaho Falls, ID 83404	1371462	09/05/2006	ID	
Fletcher Allen Health Care Mobile Pad 790 College Parkway Colchester, VT 05446	1659309615	09/05/2006	VT	790 College Parkway
University of Penn Imaging Center 3600 Market Street 3rd Floor Silverstein Philadelphia, PA 19104	764089	09/05/2006	PA	
Sitron-Hammel Radiology Group 4277 Hempstead Turnpike Suite 200 Bethpage, NY 11714	W14891	09/05/2006	NY	
MRI of Saint Louis Obispo 1064 Murray Avenue San Luis Obispo, CA 93405	1881661361	09/05/2006	CA	
Lahey Clinic 41 Mall Road Burlington, MA 01805	220171	09/05/2006	MA	
St Joseph Medical Center 215 N. 12th Street Reading, PA 19603	390096	09/05/2006	PA	

Spartanburg Regional Medical Center 101 E. Wood Street Spartanburg, SC 29303	420007	09/05/2006	SC	
Aurora Sinai Medical Center 945 N. 12th Street Milwaukee, WI 53201	520064	09/05/2006	WI	
FHN Memorial Hospital 1045 W. Stephenson Street Freeport, IL 61032	140160	09/05/2006	IL	
Southwest Washington Medical Center 400 NE Mother Joseph Place Vancouver, WA 98668	500050	09/05/2006	WA	
St. Lukes Center for Diagnostic Imaging 6 McBride and Sons Corporate Center Drive Suite 101 Chesterfield, MO 63005	47006	09/05/2006	MO	
The Stamford Health System Shelbourn Road & West Broad Street Stamford, CT 06904	70006	09/05/2006	CT	
Hagerstown Imaging, LLC 1150 A Professional Court Hagerstown, MD 21741	1518914936	09/05/2006	MD	
GCM Suburban Imaging 6420 Rockledge Drive Suite 3100 Bethesda, MD 20817	409623	09/05/2006	MD	
Alliance Imaging-No. Idaho Imaging 2003 Lincoln Way Coeur d'Alene, ID 83814	1790291	09/05/2006	ID	

HPMA PET Center 22710 Professional Drive Suite 104 Kingwood, TX 77339	0019BY	09/05/2006	TX	
Parma Community General Hospital 7007 Powers Boulevard Parma, OH 44129	360041	09/05/2006	OH	
Pacific Shores Medical Group PET Imaging 1043 Elm Street #104 Long Beach, CA 90813	W13494	09/05/2006	CA	
Clark Memorial Hospital 1220 Missouri Avenue Jeffersonville, IN 47130	15009	09/05/2006	IN	
Abilene Imaging Center, LLC 750 North 18th Street Abilene, TX 79601	FTA070	09/05/2006	TX	
DuBois Regional Medical Center 100 Hospital Avenue DuBois, PA 15801	390086	09/06/2006	PA	
Meeker County Memorial Hospital 612 South Sibley Avenue Litchfield, MN 55355	241366	09/06/2006	MN	
Memorial Health 4700 Waters Avenue Savannah, GA 31403	110036	09/06/2006	GA	
St. Luke's Regional Medical Center, Ltd. 190 E. Bannock Street Boise, ID 83712	130006	09/06/2006	ID	
Radiology Consultants Imaging Center 400 Avenue K, SE Winter Haven, FL 33880	U3944	09/06/2006	FL	

Patient Comprehensive Cancer Center 4352 North Josey Lane Carrollton, TX 75010	0083BY	09/06/2006	TX	
The University of Tennessee Medical Center 1924 Alcoa Highway Knoxville, TN 37920	440015	09/06/2006	TN	
Radiation Therapy Regional Centers-Naples 800 Goodlette Road Suite 110 Naples, FL 34102	77215	09/06/2006	FL	
St. Mary's Medical Center 2900 First Avenue Huntington, WV 25702	510007	09/06/2006	WV	
McKinney Regional Cancer Center 4601 Medical Center Drive McKinney, TX 75069	00711W	09/06/2006	TX	
WCA Hospital PO Box 840 Jamestown, NY 14701	330239	09/06/2006	NY	207 Foote Avenue
Grants Pass Imaging and Diagnostic Center, LLC 1619 NW Hawthorne Suite 110 Grants Pass, OR 97526	1659307973	09/06/2006	OR	
Baptist Memorial Hospital-Golden Triangle 2520 5th Street North Columbus, MS 39705	250100	09/06/2006	MS	
Florida Medical Clinic 13417 US Highway 301 Dade City, FL 33525	39715	09/06/2006	FL	

Saint Clare's Hospital 400 West Blackwell Street Dover, NJ 07801	310067	09/06/2006	NJ	
Radiation Medicine Associates 2202 South 77 Sun Shine Strip Suite E Harlingen, TX 78550	00645N	09/06/2006	TX	
The Radiology Clinic, LLC 208 McFarland Circle North Tuscaloosa, AL 35406	13089	09/06/2006	AL	
Bay Area Hospital 1775 Thompson Road. Coos Bay, OR 97420	30090	09/06/2006	OR	
MMI/St. Mary's Hospital 51 US Route 1 Scarborough, ME 04074	327079	09/06/2006	ME	Suite O
Gulf Coast Medical Diagnostic Center 2024 State Avenue Panama City, FL 32405	30930	09/06/2006	FL	
Diagnostic Radiology Systems, Inc. 1010 Medical Center Drive Powderly, KY 42366	9366001	09/06/2006	KY	
Lewis Gale Medical Center 1900 Electric Road Salem, VA 24153	490048	09/06/2006	VI	
Radiology Diagnostic Center 1310 Las Tablas Road Suite 103 Templeton, CA 93465	W7491	09/06/2006	CA	
Weslaco Nuclear Imaging Center 913 S. Airport Drive Weslaco, TX 78596	1780796219	09/06/2006	TX	

Pioneer PET, LLC 1930 E. Southern Avenue Tempe, AZ 85282	1265401996	12/05/2006	AZ	
Kearney Imaging Center, LLC 3219 Central Avenue Suite 109 Kearney, NE 68847	98950	12/05/2006	NE	
Rose Medical Center 4567 East 9th Avenue Denver, CO 80220	841321373	12/05/2006	CO	
UCSF Medical Center 185 Berry Street San Francisco, CA 94107	50454	12/05/2006	CA	Lobby 7 Suite 180
Broward General Medical Center 1500 S. Andrews Avenue Fort Lauderdale, FL 33316	100039	12/05/2006	FL	
St. Paul Radiology, PA/Midwest Radiology 166 Fourth Street East St. Paul, MN 55101	CO2661	12/05/2006	MN	
Queen of the Valley Hospital 1000 Trancas Street Napa, CA 94558	941243669	12/05/2006	CA	
Dana-Farber Cancer Institute 44 Binney Street Boston, MA 02115	220162	12/05/2006	MA	
Holmes Regional Medical Center 1350 South Hickory Street Melbourne, FL 32901	100019	12/05/2006	FL	
Niagara County PET Center Niagara Falls, NY 14302	f27482	12/05/2006	NY	621 Tenth Street Department of Radiology

Augusta Medical Center 78 Medical Center Drive Fishersville, VA 22939	490018	12/05/2006	VA	
Nevada Cancer Center 2851 North Tenaya Way Las Vegas, NV 89128	VWQBHJ	12/05/2006	NV	#100
Wellstar Kennestone Hospital Imaging Center 340 Kennestone Hospital Boulevard Marietta, GA 30060	110035	12/05/2006	GA	Suite LL10
Ashtabula County Medical Center 2412 Lake Avenue Ashtabula, OH 44004	1285607416	12/05/2006	OH	The Regional Cancer Center
Rowan Regional Medical Center 514 Corporate Circle Salisbury, NC 28147	340015	12/05/2006	NC	
The Pottsville Hospital and Warne Clinic 420 South Jackson Street Pottsville, PA 17901	390030	12/05/2006	PA	
Georgetown Memorial Hospital 606 Blackriver Road Georgetown, SC 29442	1982604021	12/05/2006	SC	
Medical Center of Arlington 3301 Matlock Road Arlington, TX 76015	450675	12/05/2006	TX	
Valley View Regional Hospital 430 N. Monte Vista Ada, OK 74820	370020	12/05/2006	OK	
Montgomery Medical Services 644 Maysville Road, Suite 10 Mount Sterling, KY 40353	9141	12/05/2006	KY	
Medical Outsourcing Services, LLC 5409 N. Knoxville Avenue Peoria, IL 61614	211224	12/05/2006	IL	

Medical Outsourcing Services, LLC 1300 N. Main Street Rushville, IN 46173	223260	12/05/2006	IN	
Mayo Clinic Arizona 13400 E. Shea Boulevard Scottsdale, AZ 85259	WCTGB	12/05/2006	AZ	
Door County Memorial Hospital 323 S. 18th Avenue Sturgeon Bay, WI 54235	1093743874	12/05/2006	WI	
Center for Diagnostic Imaging-Sartell 166 19th Street S. Sartell, MN 56377	C01307	12/05/2006	MN	Suite 100
South Texas Institute of Cancer 1205 South 19th Street Corpus Christi, TX 78405	0065AZ	12/05/2006	TX	
Del Sol Medical Center 10460 Vista Del Sol El Paso, TX 79925	450646	12/05/2006	TX	
University Hospital 818 St. Sebastian Way Augusta, GA 30901	110028	12/05/2006	GA	Suite 103
St. John Health System-Tulsa, OK 1923 S. Utica Avenue Tulsa, OK 74104	370114	12/05/2006	OK	
Allen Memorial Hospital 1825 Logan Avenue Waterloo, IA 50703	160110	12/05/2006	IA	
Craig General Hospital 735 North Foreman Street Vinita, OK 74301	370065	12/05/2006	OK	
Vision Imaging of Kingston 517 Pierce Street Kingston, PA 18704	86463	12/05/2006	PA	
Lake Hospital Mentor Campus 9485 Mentor Avenue Mentor, OH 44060	360098	12/05/2006	OH	Attn: Suite A

Excela RCL PET CT Imaging, LLC 200 Village Drive Greensburg, PA 15601	1144260415	12/05/2006	PA	
Kousay Al-Kourainy, MD 5395 Ruffin Road #202 San Diego, CA 92123	A39783	12/05/2006	CA	
Memorial Hermann Northwest Hospital 1635 North Loop West Houston, TX 77008	450184	12/05/2006	TX	
Accu/Site PET/CT Imaging Center 30 Harrison Street Johnson City, NY 13790	DD1474	12/05/2006	NY	Suite #102
DDIS-Bond 9 Bond Street Brooklyn, NY 11201	687s41	12/05/2006	NY	
West Valley Radiology Medical Group 7301 Medical Center Drive West Hills, CA 91307	Hw5870A	12/05/2006	CA	Suite 103
Westside Diagnostic and Therapeutic Medical Center, LLC 12524 West Washington Boulevard Los Angeles, CA 90066	TG472	12/05/2006	CA	
DDIS-Still 1783 Stillwell Avenue Brooklyn, NY 11223	687s41	12/05/2006	NY	
Alpena Regional Medical Center 1501 W, Chisholm Street Alpena, MI 49707	386000029	12/05/2006	MI	

Santa Monica Imaging Center 1245 16th Street Suite 105 Santa Monica, CA 90404	1881670248	12/05/2006	CA	
Mercer County Community Hospital 800 W. Main Street Coldwater, OH 45828	360058	12/05/2006	OH	
Johnson Memorial Hospital 1125 W. Jefferson Street Franklin, IN 46131-2675	150001	12/05/2006	IN	PO Box 549
St. Mary's Health Center 100 St. Mary's Medical Plaza Jefferson City, MO 65101	260011	12/05/2006	MO	
Eastside PET Center, LLC 46 Medical Park East Drive Birmingham, AL 35023	1619925070	12/05/2006	AL	Suite 224
United Regional Health Care System 1600 8th Street Wichita Falls, TX 76301	450010	12/05/2006	TX	
Denton Regional Medical Center 3535 S. I-35 Denton, TX 76210	450634	12/05/2006	TX	
Canton-Potsdam Hospital 50 Leroy Street Potsdam, NY 13676	161012691	12/05/2006	NY	
St. John Macomb Hospital 11800 E. 12 Mile Road Warren, MI 48093	230195	12/05/2006	MI	
Cleveland Regional Medical Center 201 East Grover Street Shelby, NC 28150	340021	12/05/2006	NC	
Bluefield Regional Medical Center 500 Cherry Street Bluefield, WV 24701	510071	12/05/2006	WV	

Charles Cole Memorial Hospital 1001 East Second Street Coudersport, PA 16915	390246	12/05/2006	PA	
New Jersey State Open MRI 155 State Street Hackensack, NJ 07601	85238	12/06/2006	NJ	
Westcoast Radiology 501 S. Lincoln Ave. Clearwater, FL 33756	E4187	12/06/2006	FL	
The Iowa Clinic / PETCO, LLC 1221 Pleasant Street Des Moines, IA 50309	I5819	12/06/2006	IA	
Quantum PET-Holy Spirit Hospital 890 Poplar Church Road Camp Hill, PA 17011	40635	12/06/2006	PA	
Coastal Bend PET Scan, Ltd. 1533 5th Street Corpus Christi, TX 78404	FTN014	12/06/2006	TX	
Pottstown Memorial Medical Center 1600 E. High Street Pottstown, PA 19464	390123	12/06/2006	PA	
UTMB PET/CT Imaging Center UTMB-Rebecca Sealy Hospital Galveston, TX 77555-0793	R518	12/06/2006	TX	301 University Blvd.
Diagnostic Imaging Services, LLC 11110 Medical Campus Road, Suite 204 Hagerstown, MD 21742	1114982808	12/06/2006	MD	
North Memorial Medical Center 3435 West Broadway Robbinsdale, MN 55422	1851344907	12/06/2006	MN	
Hays Medical Center 2220 Canterbury Drive Hays, KS 67601	2473	12/06/2006	KS	

St. Patrick Hospital & Health Sciences Center 500 West Broadway Missoula, MT 59802	1023032588	12/06/2006	MT	
Park Ridge Hospital 100 Hospital Drive Hendersonville, NC 28792	340023	12/06/2006	NC	
Fostoria Community Hospital 610 Plaza Drive Fostoria, OH 44830	361318	12/06/2006	OH	
UMDNJ-University Hospital 30 Bergen Street Newark, NJ 07101	221775306	12/06/2006	NJ	ADMC 5 Room 575 P.O. Box 1709
Metabolic Imaging of Boca 5458 Town Center Road Suite 103 Boca Raton, FL 33486	E5434	12/06/2006	FL	
Olean Open MRI 413 North 8th Street Olean, NY 14760	AA0996	12/06/2006	NY	
Mercy Memorial Health Center 1011 14th Avenue NW Ardmore, OK 73401	731500629	12/06/2006	OK	
Pontiac Osteopathic Hospital d.b.a. POH Medical Center 385 N. Lapeer Road Oxford, MI 48371	230207	12/06/2006	MI	
Texas Oncology Ft. Worth 1450 8th Avenue Fort Worth, TX 76104	00R66C	12/06/2006	TX	
West Valley Imaging 3025 S. Rainbow Boulevard Las Vegas, NV 89146	WQBDY	12/06/2006	NV	
Springman Medical Plaza Imaging Center PO Box 4650 Brownsville, TX 78523	1912973108	12/06/2006	TX	

EMH Regional Health Care System 630 East River Street Elyria, OH 44035	360145	12/06/2006	OH	
Denfeld Medical Center 4702 Grand Avenue Duluth, MN 55807	C06028	12/06/2006	MN	
Caldwell Memorial Hospital 321 Mulberry Street SW Lenoir, NC 28645	560554202	12/06/2006	NC	
Belleville, IL (Swansea) 4253 Argosy Court Madison, WI 53714	208196	12/06/2006	WI	
Comprehensive Cancer Centers of Nevada - NW Office 7445 Peak Drive Las Vegas, NV 89128	WCHCX	12/06/2006	NV	
Wheaton Francisan Healthcare-St. Joseph 5000 W. Chambers Street Milwaukee, WI 53210	520136	12/06/2006	WI	
United Hospital Center Rt. 19 South Clarksburg, WV 26302-1680	510006	12/06/2006	WV	#3 Hospital Plaza
Massena Memorial Hospital 1 Hospital Dive Massena, NY 13662	330223	12/06/2006	NY	
Redlands Community Hospital 350 Terracina Boulevard Redlands, CA 92373	ZZZ01782Z	12/06/2006	CA	
The Valley Hospital 1 Valley Health Plaza Paramus, NJ 07652	310012	12/06/2006	NJ	
Advanced Medical Imaging of Toms River 1430 Hooper Avenue Toms River, NJ 08753	447655	12/06/2006	NJ	Suite 102

McKenna Memorial Hospital 598 N. Union Street New Braunfels, TX 78130	450059	12/06/2006	TX	
NSMS-Parkland Farmington, Mo 4253 Argosy Court Madison, WI 53714	208196	12/06/2006	WI	
Alton Memorial Hospital 1 Memorial Drive Alton, IL 62002	14002	12/06/2006	IL	
Medical City Dallas Hospital Diagnostic Imaging Dallas, TX 75230	20943901	12/06/2006	TX	7777 Forest Lane
Mercy Medical Center 301 St. Paul Place Baltimore, MD 21202	210008	12/06/2006	MD	
St. Joseph's Medical Center 503 N. 3rd Street Brainerd, MN 56401	240075	12/06/2006	MN	
Covenant Healthcare 600 Irving Street Saginaw, MI 48602	1457354318	12/06/2006	MI	
Little Company of Mary Hospital 2800 West 95th Street Evergreen Park, IL 60805	140179	12/06/2006	IL	
Marion General Hospital Progressive Medical Imagine 830 N. Theatre Drive Marion, IN 46952	1457354318	12/06/2006	IN	
Escondido Pulmonary Medical Group 5395 Ruffin Road Suite 202 San Diego, CA 92123	W301	12/06/2006	CA	
Marshall Medical Center 1100 Marshall Way Placerville, CA 95667	50254	12/06/2006	CA	
Clermont Radiology 1804 Oakley Seaver Drive Clermont, FL 34711	U5066	12/06/2006	FL	Suite B

Mahoning Valley Imaging, Ltd. 7067 Tiffany Boulevard Youngstown, OH 44514	1457354318	12/06/2006	OH	
Southeastern Ohio Regional Medical Center 1341 Clark Avenue Cambridge, OH 43725	1457354318	12/06/2006	OH	
White County Medical Center 3214 E. Race Avenue Searcy, AR 72143	40014	12/06/2006	AR	
MED Arts JVIC 9101 Franklin Square Drive Baltimore, MD 21237	1932167178	12/06/2006	MD	
Memorial Hermann Southwest OPID 7797 SW Freeway Houston, TX 77074	741152597	12/06/2006	TX	
Twin County Regional Hospital 200 Hospital Drive Galax, VA 24333	1174524094	12/06/2006	VA	
Marion Ancillary Services, LLC 1040 Delaware Avenue Marion, OH 43302	991	12/06/2006	OH	
Owensboro Medical Health Systems Breckenridge Diagnostics Owensboro, KY 42301	180038	12/06/2006	KY	1020 Breckenridge Street
NSMS-Darlington, WI 209 Limestone Pass Cottage Grove, WI 53527	92420	12/06/2006	WI	
Santa Fe Imaging, LLC 1640 Hospital Drive Santa Fe, NM 87505	400521037	12/06/2006	NM	

Suncoast Imaging of Port Orange 1680 Dunlawton Avenue Port Orange, FL 32127	40370B	12/06/2006	FL	
Great Basin Imaging 2874 N Carson Street 3rd Floor Carson City, NV 89706	WJBDK	12/06/2006	NV	
St. Francis Hospital & Health Centers 1201 Hadley Road Mooresville, IN 46158	1457354318	12/06/2006	IN	
Las Colinas Cancer Center 7415 Las Colinas Boulevard Irving, TX 75063	00J062	12/06/2006	TX	
ADI 4006 Jonathan Street Waterloo, IA 50701	I15454	12/06/2006	IA	
St Francis Hospital & Health Centers South 8111 S. Emerson Avenue Indianapolis, IN 46237	1457354318	12/06/2006	IN	
Central Baptist Diagnostic Center 100 Southland Drive Lexington, KY 40503	9375001	06/14/2006	KY	Suite B
Baptist Health Medical Center-NLR PET/CT 3500 Springhill Drive North Little Rock, AR 72117	5F437	05/03/2007	AR	Suite 100
Commonwealth Hematology Oncology 216 Southtown Drive Danville, KY 40422	1285687178	03/21/2007	KY	
Commonwealth Hematology Oncology 95 Bogle Office Park Drive Somerset, KY 42503	1285687178	03/21/2007	KY	

UMPC and The Washington Hospital Cancer Center 155 Wilson Avenue Washington, PA 15301	105589VXB	03/10/2006	PA	
Lexington Diagnostic Center 1725 Harrodsburg Road Suite 100 Lexington, KY 40504	0406	03/08/2006	KY	
UW PET Imaging Center 8007 Excelsior Drive Madison, WI 53717	1346266319	04/03/2007	WI	
Fort Wayne Medical Oncology and Hematology 7910 W. Jefferson Boulevard Suite 107 Ft. Wayne, IN 46804	055770	04/23/2007	IN	
Danbury Hospital 24 Hospital Avenue Danbury, CT 06810	070033	04/23/2007	CT	
Reno Diagnostic Centers 590 Eureka Avenue Reno, NV 89512	1518904994	04/24/2007	NV	
The Kirklin Clinic PET-CT Facility 2000 6th Ave South Birmingham, AL 35233	10933768723	05/07/2007	AL	
PET Imaging Radiology, PSC Paseo San Pablo 100 Bayamon, PR	0085142	05/15/2007	PR	EDIF Dr. Arturo Cadilla Suite 208
Punxsutawney Area Hospital 81 Hillcrest Drive Punxsutawney, PA 15767	390199	05/15/2007	PA	
Princeton Baptist Medical Center 701 Princeton Avenue SW Birmingham, AL 35211	35211	05/30/2007	AL	
Medical Arts Radiology Commack 55 Veterans Memorial Highway Commack, NY 11725	W11682	05/31/2007	NY	

Carrol, Sheth & Raghavan, MD 1460 Bluegrass Avenue Louisville, KY 40215	5460	06/05/2007	KY	
Personal Care Molecular Imaging 1514 Highway 138 Wall, NJ 07719	109631	06/06/2007	NJ	
Lincoln Radiology Imaging 7121 Stephanie Lane Lincoln, NE 68516	099920	06/06/2007	NE	
Medcenter One 300 North 7th Street Bismark, ND 58506-5525	1538245634	07/24/2007	ND	
Wheaton Franciscan Healthcare - All Saints 3801 Spring Street Racine, WI 53405	520096	08/08/2007	WI	N/A
Diagnostic Centers of America 6080 Boynton Boulevard Suite 140 Boynton Beach, FL 33437	E4439	08/22/2007	FL	N/A
Center for Integrative Cancer Medicine, P.A 1733 Curie Drive Suite 305 El Paso, TX 79902	00315U	08/22/2007	TX	N/A
St. Luke's Hospital 1026 A Avenue N.E. Cedar Rapids, IA 52406-3026	160045	08/22/2007	IA	N/A
Shared PET Imaging, LLC - Cincinnati OH Eden Avenue & Albert Sabin Way Cincinnati, OH 45219	ID01511	08/22/2007	OH	N/A
Integrated Magnetic Imaging 7100 University Court Montgomery, AL 36117	7811	08/22/2007	AL	N/A

Northwest PET Imaging 265 N. Broadway Street Portland, OR 97227	105512	08/22/2007	OR	N/A
Center for Diagnostic Imaging - St. Louis Park 5775 Wayzata Boulevard #190 St. Louis Park, MN 55416	C01307	08/22/2007	MN	N/A
Ponca City Medical Center 1900 North 14th Street Ponca City, OK 74601	370006	08/22/2007	OK	N/A
Sanford Health 1305 W. 18th Street Sioux Falls, SD 57117	430027	08/22/2007	SD	N/A
Central Valley PET Imaging 4744 Quail Lake Drive Stockton, CA 95207	00A484230	08/22/2007	CA	N/A
PET/CT Imaging Center 4000 N. Illinois Lane Swansea, IL 62226	201339	08/22/2007	IL	PET/CT Imaging Center
Memorial Medical Center 1105 W. Frank Avenue Suite 100 Lufkin, TX 75901	450211	08/22/2007	TX	d.b.a. Temple Imaging Center
Rockingham Memorial Hospital 235 Cantrell Ave Harrisonburg, VA 22801	490004	08/22/2007	VA	N/A
Regions Imaging Center 401 Phalen Boulevard 41101C St. Paul, MN 55101	240106	08/22/2007	MN	N/A
Florida Hospital Imaging, LLC 335 Clyde Morris Boulevard Suite 250 Ormond Beach, FL 32174	1104876358	08/22/2007	FL	N/A
Hutchinson Clinic, PA 2101 North Waldron Street Hutchinson, KS 67502	1043298474	08/22/2007	KS	N/A

Parkwest Imaging 3676 Parker Boulevard Pueblo, CO 81008	455838	08/22/2007	CO	N/A
St. Clair Hospital/UPMC Cancer Center PET/CT 1000 Bower Hill Road Pittsburgh, PA 15243	1699708792	08/22/2007	PA	N/A
St. Joseph Mercy Oakland (SJMO) 44405 Woodward Avenue Pontiac, MI 48341	1457354318	08/22/2007	MI	N/A
Edward Hospital 801 S. Washington Street Naperville, IL 60540	140231	08/22/2007	IL	N/A
East Montgomery Imaging Center 6880 Winton Blount Boulevard Montgomery, AL 36117	58866	08/22/2007	AL	N/A
Memorial Hospital of Martinsville and Henry County 320 Hospital Drive Martinsville, VA 24112	490079	08/22/2007	VA	N/A
Thomas Hospital 750 Morphy Avenue Fairhope, AL 36532	10100	08/22/2007	AL	N/A
Portland Adventist Medical Center 10123 SE Market Street Portland, OR 97216	380060	08/22/2007	OR	N/A
Nash Healthcare System, Inc. 2460 Curtis Ellis Drive Rocky Mount, NC 27804	340147	08/22/2007	NC	N/A
North Broward Medical Center 201 E. Sample Road Deerfield Beach, FL 33064	100068	08/22/2007	FL	Radiology
Jennie Stuart Medical Center 320 West 18th Street Hopkinsville, KY 42240	180051	08/22/2007	KY	N/A

Greater Houston Imaging, L.P. 6565 West Loop South Suite 100 Bellaire, TX 77401	FTNPX1	08/22/2007	TX	N/A
Sunrise Hospital Medical Center 3186 South Maryland Parkway Las Vegas, NV 89109	290003	08/22/2007	NV	N/A
The Diagnostic and Treatment Center 3401 Cranberry Boulevard Weston, WI 54476	92450	08/22/2007	WI	N/A
Ochsner Medical Center 1514 Jefferson Highway New Orleans, LA 70121	720502505	08/22/2007	LA	N/A
Inland Empire Medical Imaging 225 W. Hospitality Lane Suite #100 San Bernardino, CA 92408	zzz316682	08/22/2007	CA	N/A
Independent Nuclear PET Imaging 1115 N. Parrott Avenue Okeechobee, FL 34972	1922070796	08/22/2007	FL	N/A
Hugh Chatham Memorial Hospital 180 Parkwood Drive Elkin, NC 28621	340097	08/22/2007	NC	N/A
Marian Medical Center/Plaza Diagnostic Imaging 525 E. Plaza Drive Santa Maria, CA 93454	50107	08/22/2007	CA	N/A
DDIS-FH 8002 Kew Gardens Road Kew Gardens, NY 11415	687s41	08/22/2007	NY	N/A
NYPH-Weill Cornell 525 E 68th Street New York, NY 10021	131623978	08/22/2007	NY	N/A

Genesys Regional Medical Center One Genesys Parkway Grand Blanc, MI 48439-8066	230197	08/22/2007	MI	N/A
Geisinger Medical Center 100 North Academy Avenue Danville, PA 17822	390006	08/22/2007	PA	N/A
Citrus Diagnostic Center 922 N Citrus Avenue Crystal River, FL 34428	K5374	08/22/2007	FL	N/A
Middlesex Hospital 534 Saybrook Road Middletown, CT 6457	70020	08/22/2007	CT	N/A
Geisinger Wyoming Valley Medical Center 1000 East Mountain Drive Wilkes-Barre, PA 18711	390270	08/22/2007	PA	N/A
Canton, IL - Northern Shared Medical Services 209 Limestone Pass Cottage Grove, WI 53527	208196	08/22/2007	WI	N/A
Self Regional Healthcare 102 Academy Street Greenwood, SC 29646	420071	08/22/2007	SC	N/A
Bristol Hospital Brewster Road Bristol, CT 06011	70029	08/22/2007	CT	P.O. Box 977
East Texas Hematology & Oncology Clinic, PA 1202 West Frank Avenue Lufkin, TX 75904	00T37K	08/22/2007	TX	N/A
St. John River District Hospital 4100 River Road East China, MI 48054	230241	08/22/2007	MI	N/A

Morgan Hospital 2209 John R Wooden Drive Martinsville, IN 46151	150038	08/22/2007	IN	N/A
Cotton-O'Neil Cancer Center 1414 SW 8th Street Topeka, KS 66606	1811944457	08/22/2007	KS	N/A
Barnes-Jewish West County Hospital 12634 Olive Boulevard St Louis, MO 63141	260162	08/22/2007	MO	N/A
Hardin Memorial Hospital 913 North Dixie Avenue Elizabethtown, KY 42701	180012	08/22/2007	KY	N/A
Cancer Institute of Florida, LLC 894 E. Altamonte Drive Altamonte Springs, FL 32701	72793	08/22/2007	FL	N/A
Community Hospital, New Port Richey 5637 Marine Parkway New Port Richey, FL 34652	100191	08/22/2007	FL	N/A
Pulaski Community Hospital 2400 Lee Highway Pulaski, VA 24301	490116	08/22/2007	VA	N/A
Advocate South Suburban Hospital 17800 S. Kedzie Avenue Hazel Crest, IL 60429	3.62169E+11	08/22/2007	IL	N/A
St. Vincent's Medical Center 2800 Main Street Bridgeport, CT 6606	70028	08/22/2007	CT	N/A
Cayuga Medical Center at Ithaca 3218 Wilkins Road Ithaca, NY 14850	330307	08/22/2007	NY	N/A
Immanuel-ST Josephs Mayo Health Stystem 1025 Marsh Street Mankato MN 56002-8673	240093	08/22/2007	MN	PO Box 8673

Kell West Regional Hospital 5420 Kell West Boulevard Wichita Falls, TX 76310	450827	08/22/2007	TX	N/A
Aurora Medical Center Kenosha 10400 75th Street Kenosha, WI 53142	520189	08/22/2007	WI	N/A
Aurora Lakeland Medical Center W3985 County Rd Nn Elkhorn, WI 53121	520102	08/22/2007	WI	N/A
Munson Medical Center 1105 Sixth Street Traverse City, MI 49684	230097	08/22/2007	MI	N/A
Kansas City Cancer Center - North 8700 Greenhills Road Kansas City, MO 64154	5650000E	08/22/2007	MO	N/A
PET Imaging Center of Maine 885 Union Street Suite 115 Bangor, ME 04401	10211501	08/22/2007	ME	N/A
SMS - Chester, IL 1900 State Street Chester, IL 62233	208196	08/22/2007	IL	N/A
PET of Reston, LP 1800 Town Center Drive Suite 115 Reston, VA 20190	G01960P03	08/22/2007	VA	N/A
Healthcare Imaging Center 4334 Central Ave Riverside, CA 92506	ZZZ14451Z	08/22/2007	CA	N/A
Robert Wood Johnson University Hospital at Hamilton 1 Hamilton Health Place Hamilton, NJ 08690	310110	08/22/2007	NJ	N/A
Northside Hospital 1000 Johnson Ferry Road Atlanta, GA 30342	110161	08/22/2007	GA	N/A

Aurora Medical Center Kenosha 10400 75th Street Kenosha, WI 53142	520189	08/22/2007	WI	N/A
Partners Imaging Center of Sarasota 1250 S. Tamiami Trail Suite 103 Sarasota, FL 34239	Q0353	08/22/2007	FL	N/A
Memorial Medical Center 216 Sunset Place Neillsville, WI 54456	521323	08/22/2007	WI	N/A
Central Virginia Imaging, LLC 1900 Tate Spings Road Suite 21 Lynchburg, VA 24501	1578594412	08/22/2007	VA	N/A
Los Alamitos Medical Center 3951 Katella Ave Los Alamitos, CA 90720	50551	08/22/2007	CA	N/A
Valley Advanced Imaging, LLC 2403 Butler Street Easton, PA 18042	1417907023	08/22/2007	PA	N/A
Good Samaritan PET/CT and Imaging services 1245 Montauk Hwy West Islip NY 11795	330286	08/22/2007	NY	N/A
Scotland Memorial Hospital 500 Lauchwood Drive Laurinburg, NC 28352	340008	08/22/2007	NC	N/A
McFarland Clinic, P.C. 1111 Duff Avenue Ames, IA 50010	1639135643	08/22/2007	IA	N/A
Providence Hospital 1150 Varnum Street NE Washington, DC 20017	90006	08/22/2007	DC	N/A
The Angeles Clinic and Research Institute 11818 Wilshire Boulevard Suite 200 Los Angeles, CA 90025	W15185A	08/22/2007	CA	N/A

Rose Radiology Centers, Inc. 5107 N. Armenia Avenue Tampa, FL 33603	1629162904	08/22/2007	FL	Bldg B
Texas Oncology East Houston 13111 East Freeway Houston, TX 77015	1811944101	08/22/2007	TX	N/A
NSMS - St. Joe's - Breese, IL 9515 Holy Cross Lane Breese, IL 62230	208196	08/23/2007	IL	N/A
UT Cancer Institute 7945 Wolf River Boulevard Germantown, TN 38138	3711381	08/23/2007	TN	N/A
Fresno Imaging Center 6191 N. Rhesta Avenue Fresno, CA 93710	N/A	08/23/2007	CA	N/A
Imaging Consultants Inc. at Sturdy Memorial 211 Park Street Attleboro, MA 02703	327085	08/23/2007	MA	N/A
Fairfax PET Imaging Center, LLC 8503 Arlington Boulevard Lower level Fairfax, VA 22031	1861433674	08/23/2007	VA	N/A
City Hospital, Inc. 2500 Hospital Drive Martinsburg, WV 25401	510008	08/23/2007	WV	N/A
White Plains Radiology Associates PET Center Davis and Post Roads White Plains, NY 10601	w11842	08/23/2007	NY	N/A
Lenoir Memorial Hospital 100 Airport Road Kinston, NC 28503-1678	1962446385	08/23/2007	NC	N/A

Sand Lake Imaging 9350 Turkey Lake Road Orlando, FL 32819	34896	08/23/2007	FL	SUITE 100
Advocate Lutheran General Center For Advanced Care 1800 Luther Lane Park Ridge, IL 60068	140223	08/23/2007	IL	N/A
Flower Hospital 5200 Harroun Road Sylvania, OH 43560	360074	08/23/2007	OH	N/A
Dekalb Memorial Hospital 1316 E. 7th Street Auburn, IN 46706	N/A	08/23/2007	IN	N/A
St. John Hospital and Medical Center 1315 Macom Drive Naperville, IL 60564	116	08/23/2007	IL	N/A
Bayhealth Medical Center 540 S. Governors Avenue Dover, DE 19904	N/A	08/23/2007	DE	N/A
ImageCare 713 Troy-Schenectady Road Suite 124 Latham, NY 12110	1922048370	08/23/2007	NY	Capital Region Health Park
Southside Regional Medical Center 801 South Adams Street Petersburg, VA 23803	490067	08/23/2007	VA	N/A
East Alabama Medical Center-Auburn Diagnostic Imaging 1527 Professional Parkway Auburn, AL 36830	29	08/23/2007	AL	N/A
Trover Health System 900 Hospital Drive Madisonville, KY 42431	1457354318	08/23/2007	KY	N/A

Doctors Hospital at Renaissance, Ltd 5501 S. McColl Road Edinburg, TX 78359	450869	08/23/2007	TX	N/A
Twin Lakes Imaging Center 1890 LPGA Boulevard Daytona Beach, FL 32117	1023040870	08/23/2007	FL	Suite 110
Nathan Littauer Hospital 99 E. State Street Gloversville, NY 12078	330276	08/23/2007	NY	N/A
Altoona Regional Health System 620 Howard Avenue Altoona, PA 16601	390073	08/23/2007	PA	N/A
Warren General Hospital 2 Crescent Park West Warren, PA 16365	390146	08/23/2007	PA	N/A
Reid Hospital Health Care Services 1401 Chester Boulevard Richmond, IN 47374	1457354318	08/23/2007	IN	N/A
Orange City Area Health System 1000 Lincoln Circle SE Orange City, IA 51041	161360	08/23/2007	IA	N/A
Mercy Hospital Clermont 3000 Hospital Drive Batavia, OH 45103	1457354318	08/23/2007	OH	N/A
Arroyo Grande Community Hospital 345 South Halcyon Road Arroyo Grande, CA 93454	50016	08/23/2007	CA	N/A
HealthEast St. John's Hospital 1575 Beam Avenue Maplewood, MN 55109	240210	08/23/2007	MN	N/A

St. Joseph's/Candler Health System 5353 Reynolds Street Savannah, GA 31405	110024	08/23/2007	GA	N/A
NSMS - Pickneyville, IL 101 North Walnut Street Pinckneyville, IL 62274	208196	08/23/2007	IL	N/A
Duke Raleigh Hospital 3400 Wake Forrest Road Raleigh, NC 27609	340073	08/23/2007	NC	N/A
Advanced Radiology Services & The Center for Women 400 Plaza Court East Stroudsburg, PA 18301	33012	08/23/2007	PA	Suite C
Community Hospital 10020 Donald S. Powers Drive Munster, IN 46321	140125	08/23/2007	IN	N/A
Avant Imaging - Woodland Health Center 7575 Grand River Avenue Brighton, MI 48114	1457354318	08/23/2007	MI	N/A
EVDI Medical Imaging - East Mesa 6424 E. Broadway Road Mesa, AZ 85206	1164434098	08/23/2007	AZ	Suite 101
NSMS - St. Louis, Mo - ARCH Medical 209 Limestone Pass Cottage Grove, WI 53527	47013	08/23/2007	WI	N/A
CNY PET LLC 5100 West Taft Road Liverpool, NY 13088	AA0672	08/23/2007	NY	Suite 2C
MCMI 3000 Telegraph Avenue Oakland, CA 94609	ZZZ27496Z	08/23/2007	CA	N/A

Green Clinic, LLC 1200 S. Farmerville Street Ruston, LA 71270	57387	08/23/2007	LA	N/A
Fayette Memorial Hospital 3542 North Western Avenue Connersville, IN 47331	150064	08/23/2007	IN	N/A
Carolinas Medical Center - Union 600 Hospital Drive Monroe, NC 28112	340130	08/23/2007	NC	Nuclear Medicine Department
Citrus Medical Imaging Associates, Inc. 1000 Lakes Drive Suite 170 West Covina, CA 91790	HW2326	08/23/2007	CA	N/A
Radiation Oncology at WFUBMC Radiation Oncology Medical Center Boulevard Winston-Salem, NC 27152	340047	08/24/2007	NC	Wake Forest University Baptist Medical Center Comprehensive Cancer Center
Harrison County Hospital 245 Atwood Street Corydon, IN 47112	151331	08/24/2007	IN	N/A
Thibodaux Regional Medical Center 602 North Acadia Road Thibodaux LA 70301	190004	08/24/2007	LA	N/A
NSMS - Hot Springs, AR 1600 Higdon Ferry Road Hot Springs AR 71913	5F168	08/24/2007	AR	N/A
Pacific Oncology, PC 15700 SW Greystone Court Beaverton OR 97006	1043262116	08/24/2007	OR	N/A
Cancer Care Associates 1791 E. Fir Avenue Fresno, CA 93720	222375652	08/24/2007	CA	N/A

Massatusetts Mobile PET, PC- - Newburyport 25 Highland Avenue Newburyport, MA 01950	327086	08/24/2007	MA	N/A
Hematology Oncology Associates of Illinois 6801 West 34th Street Berwyn, IL 60402	218890	08/24/2007	IL	Suite 107
Massatusetts Mobile PET, PC - Haverhill 140 Lincoln Avenue Haverhill, MA 01830	327086	08/24/2007	MA	N/A
Corinth Medical Group 4851 I35 East Suite 101 Corinth, TX 76210	00K22X	08/24/2007	TX	N/A
New England PET Imaging Manchester One Elliot Way Manchester, NH 03103	327081	08/24/2007	NH	N/A
The Surgery Clinic 1026 Goodyear Avenue Gadsden, AL 35999	N/A	08/24/2007	AL	Suite B-101
Boston Medical Center 830 Harrsion Avenue Boston, MA 02118	220031	08/24/2007	MA	Suite 1600
Mercy Health Center 4190 24th Avenue Fort Gratiot, MI 48059	1457354318	08/24/2007	MI	N/A
The Cancer Center of Santa Barbara 300 W. Pueblo Street Santa Barbara, CA 93105	W13890	08/24/2007	CA	N/A
Milford Memorial Hospital Bayhealth Medical Center 21 W. Clarke Avenue Milford, DE 19963	N/A	08/24/2007	DE	N/A

North Coast Cancer Care 417 Quarry Lakes Drive Sandusky, OH 44870	NO9915215	08/24/2007	OH	N/A
Palm Beach Gardens Open Imaging Center 3335 Burns Road #101 Palm Beach Gardens, FL 33408	U8767	08/24/2007	FL	N/A
Advanced Medical Imaging, LLC 1780 NW Myhre Road Silverdale, WA 98383	AB24179	08/24/2007	WA	Suite 1220
Swedish American Hospital 1401 E State Street Rockford, IL 61104	140228	08/24/2007	IL	N/A
Molecular Diagnostics of Eastern Omaha 117 North 32nd Avenue Suite 100 Omaha, NE 68131	99894	08/24/2007	NE	N/A
Kingwood Medical Center 22999 U.S. Hwy 59 Kingwood, TX 77339	1811942238	08/24/2007	TX	N/A
Health Village Imaging 1301 Route 72 West Manahawkin, NJ 08050	1194810978	08/24/2007	NJ	Suite 100
ARH Hazard 100 Medical Center Drive Hazard, KY 41701	520795508	08/24/2007	KY	N/A
Central Florida Imaging Center, Inc. 6801 US 27 N Suite E-3 Sebring, FL 33870	1427076769	08/24/2007	FL	N/A
West Texas Cancer Center 301 N Washington Avenue Odessa, TX 79761	00543K	08/24/2007	TX	N/A

Beloit Memorial Hospital 1969 West Hart Road Beloit, WY 53511	520100	08/24/2007	WY	N/A
Pinnacle Imaging Center 2390 NW 7th Street Miami, FL 33125	U5131	08/24/2007	FL	SUITE 103
PET Imaging of El Paso 1225 E. Cliff Drive El Paso, TX 79902	FTN035	08/24/2007	TX	Building 3 Suite 200
St. Petersburg General Hospital 6500 38th Avenue North St. Petersburg, FL 33710	N/A	08/24/2007	FL	N/A
St. Mary Medical Center 1201 Langhorne-Newtown Road Langhorne, PA 19047	390258	08/24/2007	PA	N/A
St. Joseph Medical Center 1401 St. Joseph Parkway Houston, TX 77002	1154361475	08/24/2007	TX	N/A
UPMC Northwest 1671 Allegheny Boulevard Reno, PA 16343	390091	08/24/2007	PA	N/A
Mercy Hospital Fairfield 3000 Mack Road Fairfield, OH 45014	1457354318	08/24/2007	OH	N/A
Radiology Associates of West Pasco 5539 Marine Parkway New Port Richey, FL 34652	1558328963	08/24/2007	FL	N/A
St. Dominic Hospital 969 Lakeland Drive Jackson, MS 39216	250048	08/24/2007	MS	N/A
RCOA-Adventist Health-Sequoia 4949 W. Cypress Avenue Visalia, CA 93271	1427198696	08/24/2007	CA	N/A

McKee Medical Center 2000 Boise Ave Loveland, CO 80538	60030	08/24/2007	CO	N/A
Bon Secours Richmond Community Hospital 1500 North 28th Street Richmond, VA 23223	490094	08/24/2007	VA	N/A
West Houston Medical Center 12141 Richmond Avenue Houston, TX 77082	450644	08/24/2007	TX	N/A
Shands Teaching Hospital and Clinics, Inc. 2000 SW Archer Road Gainesville, FL 32608	100113	08/24/2007	FL	Radiology, Shands Medical Plaza
Tanner Medical Center 119 Ambulance Drive Carrollton, GA 30117	110011	08/24/2007	GA	N/A
OU Medical Center 700 NE 13th Street Oklahoma City, OK 73104	1780631390	08/24/2007	OK	N/A
The Medical Center of Aurora 1400 S. Potomac Street Aurora, CO 80012	60100	08/24/2007	CO	#180
AllenRidge Diagnostic Imaging Center 520 Lecanto Highway Lecanto, FL 34461	100023	08/24/2007	FL	N/A
The PET Center at BWMC 305 Hospital Drive Baltimore, MD 21061	1124016696	08/24/2007	MD	SUITE 302
Signet Diagnostic Imaging Services, LLC 8300 West Sunrise Boulevard Plantation, FL 33322	E8667	08/24/2007	FL	N/A

Adams Diagnostic Imaging 20 Expedition Trail Gettysburg, PA 17325	65290	08/24/2007	PA	Suite 102
Jennie Edmundson Hospital 933 E. Pierce Street Council Bluffs, IA 51503	160047	08/24/2007	IA	N/A
Holy Cross Hospital 4725 N. Federal Highway Fort Lauderdale, FL 33308	100073	08/24/2007	FL	Bienes Diagnostic Imaging Center
Medical University of Ohio 3000 Arlington Avenue Toledo, OH 43614	1457354318	08/24/2007	OH	N/A
Daviess Community Hospital 1314 E Walnut Street Washington, IN 47501	150061	08/24/2007	IN	Radiology Department
Jeff Anderson Regional Medical Center 2124 14th Street Meridian, MS 39301	250104	08/24/2007	MS	N/A
Modesto Imaging Center 157 E. Coolidge Avenue Modesto, CA 95350	ZZZ01977Z	08/24/2007	CA	N/A
Sioux Center Commmunity Hospital and Health Center 605 South Main Ave Sioux Center, IA 51250	161346	08/24/2007	IA	N/A
Southern Ohio Medical Center 1121 Kinneys Lane Portsmouth, OH 45662	360008	08/24/2007	OH	N/A
Massachusetts General Hospital 55 Fruit Street Boston, MA 02114	220071	08/24/2007	MA	N/A
Clinton Memorial Hospital Regional Health System 31 Farquhar Avenue Wilmington, OH 45177	316005307	08/24/2007	OH	N/A
CJW Medical Center 1401 Johnston Willis Drive Richmond, VA 23235	34632	08/24/2007	VA	N/A

Texas Oncology Weatherford 907 Foster Lane Weatherford, TX 76086	00539K	08/24/2007	TX	N/A
Sharper Imaging Diagnostic Radiology Center 3430 Tamiami Trail Port Charlotte, FL 33952	1730288515	08/24/2007	FL	Suite B
Morristown - Hamblin Healthcare System 908 W. 4th N. Street Morristown, TN 37814	1457354318	08/24/2007	TN	N/A
Puget Sound PET Imaging 6808 220th Street SW Mountlake Terrace, WA 98043	115162600	08/24/2007	WA	Suite 150
Detar Hospital Navarro 506 E. San Antonio Street Victoria, TX 77902	450147	08/24/2007	TX	N/A
PET Imaging of Chicago 6801 West 34th Street Suite 105 Berwyn, IL 60402	214832	08/24/2007	IL	N/A
Imaging Specialists Group, Ltd. 3101 Churchill Road Flower Mound, TX 75022	1417991852	08/24/2007	TX	Suite 100
OKOmed Downtown Imaging 2101 Crawford Street Suite 115 Houston, TX 77002	1780622464	08/24/2007	TX	N/A
Clear Lake Regional Medical Center 500 Medical Center Boulevard Webster, TX 77598	1063466035	08/24/2007	TX	N/A
Norton Hospital 315 East Broadway Louisville, KY 40202	180088	08/24/2007	KY	N/A
Saratoga PET Associates, LLC 3 Emma Lane Clifton Park, NY 12065	1356357172	08/24/2007	NY	N/A

Genesis Health Care System 2800 Maple Avenue Zanesville, OH 43701	1457354318	08/24/2007	OH	N/A
Lake Cumberland Regional Hospital 27 Imaging Drive Somerset, KY 42503	1457354318	08/24/2007	KY	N/A
Saint Francis Cancer Institute 14 Doctors' Park Cape Girardeau, MO 63703	260183	08/24/2007	MO	N/A
American Health Network of IN, LLC - PET/CT 6820 Parkdale Place Indianapolis, IN 46254	1164491775	08/24/2007	IN	Suite #105
PET CT Nuclear Radiology, Inc. 1501 Edisicio Detantacourt, Suite 302 Fernadez Juncos Santorze, PR 909	57886	08/24/2007	PR	Fernadez Juncos Santorze
NSMS - Reedsburg, WI 2000 North Dewey Street Reedsburg, WI 53959	1295785079	08/24/2007	WI	N/A
Wayne Memorial Hospital 2700 Wayne Memorial Hospital Goldsboro, NC 27534	340010	08/24/2007	NC	N/A
InMed Diagnostic Services of IL 10419 Fleming Road Carterville, IL 62918	205040	08/24/2007	IL	N/A
Henrico Doctors' Hospital 1602 Skipwith Road Richmond, VA 23229	490118	08/24/2007	VA	N/A
Alliance Imaging - United General Hospital 2000 Hospital Drive Sedro Woolley, WA 98284	8862377	08/24/2007	WA	N/A
Spencer Municipal Hospital 1200 First Avenue East Spencer, IA 51301	1255328621	08/24/2007	IA	N/A

Radilogy LTD LaCholla Center – Diagnostic Imaging 5960 N. LaCholla Avenue Tucson, AZ 85704	1841261989	08/24/2007	AZ	N/A
Saint Elizabeth Regional Medical Center 555 South 70th Street Lincoln, NE 68510	280020	08/24/2007	NE	N/A
Bucyrus Community Hospital 629 N. Sandusky Avenue Bucyrus, OH 44820	361316	08/24/2007	OH	N/A
Mercy Hospital of Willard 110 E. Howard Street Willard, OH 44890	361310	08/24/2007	OH	N/A
Lower Columbia Pathologists 1606 East Kessler Boulevard Longview, WA 98632	745800	08/24/2007	WA	4th Floor
Newton Medical Center 600 Medical Center Drive Newton, KS 67114	170103A	08/24/2007	KS	N/A
Advanced Imaging Partners 508 Cleveland Street Great Bend, KS 67530	1295791325	08/24/2007	KS	N/A
Integrated Medical Imaging 1040 Greenwood Springs Boulevard Greenwood, IN 46143	221970	08/24/2007	IN	N/A
Avera Sacred Heart Cancer Center 501 Summit Street Yankton, SD 57078	430012	08/24/2007	SD	N/A
ValleyCare Medical Center 5555 W. Las Positas Boulevard Pleasanton, CA 94588	50283	08/24/2007	CA	N/A
NSMS - Mena, AR 311 North Morrow Street Mena, AR 71953	1295785079	08/24/2007	AR	N/A

Memorial Hospital Easton 219 S. Washington Street Easton, MD 21601	210037	08/24/2007	MD	N/A
Seattle Cancer Care Alliance 825 Eastlake Avenue E Seattle, WA 98109	500138	08/24/2007	WA	Medical Imaging
Alliance Imaging - The Vancouver Clinic 700 NE 87th Avenue Vancouver, WA 98664	8864364	08/24/2007	WA	N/A
Martin Center for Diagnostic and Imaging Services 3901 S. Fremont Avenue Springfield, MO 65804	260040	08/24/2007	MO	N/A
Aultman Hospital 2600 Sixth Street SW Canton, OH 44710	1457354318	08/24/2007	OH	N/A
Imaging Consultants, Inc. at Harrington Memorial 600 Federal Street Andover, MA 01810	327085	08/24/2007	MA	N/A
Rhode Island Pet Services at Kent County 600 Federal Street Andover, MA 01810	1538113113	08/24/2007	MA	N/A
Imaging Consultants Inc. at Hawthorn 600 Federal Street Andover, MA 01810	1851449078	08/24/2007	MA	N/A
Swedish Covenant Hospital 5145 N California Avenue Chicago, IL 60625	362179813	08/24/2007	IL	N/A
Banner Baywood Medical Center 6644 E. Baywood Avenue Mesa, AZ 85206	30088	08/24/2007	AZ	N/A
Lourdes Hospital 1530 Lone Oak Road Padukah, KY 42003	1346244126	08/24/2007	KY	N/A

St, Vincent Oncology Center 8301 Harcourt Road Indianapolis, IN 46260	150084	08/24/2007	IN	N/A
United Hospital System, Inc. 9555 76th Street Pleasant Prairie, WI 53518	520021	08/24/2007	WI	N/A
East Tennessee Diagnostic Center 1450 Dowell Springs Boulevard Suite 210 Knoxville, TN 37909	1710932553	08/24/2007	TN	N/A
Nazareth Hospital 8400 Roosevelt Boulevard Philadelphia, PA 19152	390204A	08/24/2007	PA	N/A
Good Samaritan Hospital 2425 Samaritan Drive San Jose, CA 95124	50380	08/24/2007	CA	N/A
MedSpecialists Imaging Center 1064 Keene Road Dunedin, FL 34698	AB585	08/24/2007	FL	N/A
NSMS - Pekin, IL 2355 Broadway Road Pekin, IL 61544	1295785079	08/24/2007	IL	N/A
Bluegrass Regional Imaging, LLC 701 Bob-O-Link Drive Lexington, KY 40504	1871542670	08/24/2007	KY	Suite 245
Fairfax Pet Imaging Center 8503 Arlington Boulevard Fairfax, VA 22031	1831220714	08/24/2007	VA	suite 120LL
Lodi Community Hospital 225 Elyria Street Lodi, OH 44254	361303	08/24/2007	OH	N/A
Legacy Meridian Park Hospital 19260 SW 65th Avenue Suite 165 Tualatin, OR 97062	380089	08/24/2007	OR	N/A

Galion Community Hospital 269 Portland Way South Galion, OH 44833	361325	08/24/2007	OH	N/A
Oncology Hematology Associates of Central Illinois 8940 N. Wood Sage Road Peoria, IL 61615	616880	08/24/2007	IL	N/A
Mid Ohio Oncology/Hematology, Inc. 3100 Plaza Properties Boulevard Columbus, OH 43219	1376509661	08/24/2007	OH	N/A
Kentucky Imaging Center 3475 Richmond Road Lexington, KY 40509	1992876981	08/24/2007	KY	SUITE 150
Salem Community Hospital 1995 East State Street Salem, OH 44460	1639131535	08/24/2007	OH	N/A
Belmont Community Hospital 51339 National Road St. Clairsville, OH 43950	360153	08/24/2007	OH	N/A
Golder CT and MRI Center 613 North Golder Avenue Odessa, TX 79761	N/A	08/24/2007	TX	N/A
NSMS - Reedsburg, WI 2000 North Dewey Street Reedsburg, WI 53959	1295785097	08/24/2007	WI	N/A
MaineGeneral Medical Center 361 Old Belgrade Road Augusta, ME 04330	200039A	08/24/2007	ME	N/A
The Oklahoma PET Center, PLLC 5401 N. Portland Avenue Suite 330 Oklahoma City, OK 73112	569959716M	08/24/2007	OK	N/A
NSMS - Blytheville, AR 1520 North Division Street Blytheville, AR 72316	1295785079	08/24/2007	AR	N/A

NSMS - Benton, AR 1 Medical Park Drive Benton, AR 72015	1295785079	08/24/2007	AR	N/A
Mercy Health System 1000 Mineral Point Avenue Janesville, WI 53548	520066	08/24/2007	WI	N/A
WA Foote Memorial Hospital 205 N. East Avenue Jackson, MI 49201	230092	08/24/2007	MI	N/A
Northern MIchigan Hospital 416 Connable Avenue Petoskey, MI 49770	230105	08/24/2007	MI	N/A
Anchor Health Centers 800 Goodlette Road N. Naples, FL 34102	1174571608	08/24/2007	FL	Suite 130
New Ulm Medical Center 1324 5th North Street New Ulm, MN 56073	2880	08/24/2007	MN	N/A
Radiology Associates of Brooklyn LLP 2021 Avenue X Brooklyn, NY 11235-2905	1134244916	08/24/2007	NY	N/A
NYOH Mobile PET/CT Hudson 69 Prospect Road Hudson, NY 12534	1609863448	08/24/2007	NY	N/A
Integris Bass Baptist Health Center 600 South Monroe Enid, OK 73703	1144236571	08/24/2007	OK	N/A
Imaging Consultants Inc at Weymouth Woods 59 Performance Drive Weymouth, MA 2188	1487690335	08/24/2007	MA	N/A
St. Vincent Medical Center 2131 W. Third Street Los Angeles, CA 90057	50502	08/24/2007	CA	N/A

Caritas PET Imaging, LLC at Holyoke Medical Center 575 Beech Street Holyoke, MA 1040	327087	08/24/2007	MA	N/A
St. James Healthcare 400 South Clark Butte, MT 59701	270017	08/24/2007	MT	N/A
Inglewood Imaging Center 211 N. Prairie Avenue Inglewood, CA 90301	TD097	08/24/2007	CA	N/A
Duncan Regional Hospital 1700 Whisenant Drive Duncan, OK 73534	370023	08/24/2007	OK	PO Box 100
OhioHealth Ambulatory PET/CT 500 Thomas Lane Columbus, OH 43214	360006	08/24/2007	OH	N/A
Baylor Diagnostic Imaging Center at Junius 3900 Junius Street Suite 100 Dallas, TX 75246	450021	08/24/2007	TX	N/A
PET/CT Imaging at White Marsh 9900 Franklin Square Drive Suite D Nottingham, MD 21236	FMNX01	08/28/2007	MD	N/A
Central Baptist Diagnostic Center 100 Southland Drive Lexington, KY 40503	9375001	06/14/2006	KY	Suite B
Baptist Health Medical Center - NLR PET/CT 3500 Springhill Drive North Little Rock, AR 72117	5F437	05/03/2006	AR	Suite 100

Commonwealth Hematology Oncology 95 Bogle Office Park Drive Somerset, KY 42503	1285687178	03/21/2007	KY	N/A
Commonwealth Hematology Oncology 216 Southtown Drive Danville, KY 40422	1285687178	03/21/2007	KY	N/A
Jefferson Center City Imaging 850 Walnut Street Philadelphia, PA 19107	66277	09/07/2007	PA	N/A
EPIC Imaging Center 233 NE 102 Avenue Portland, OR 97220	0000WCGNQ	09/11/2007	OR	N/A
UPMC and The Washington Hospital Cancer Center 155 Wilson Avenue Washington, PA 15301	105589VXB	03/10/2006	PA	N/A
Lexington Diagnostic Center 1725 Harrodsburg Road Suite 100 Lexington, KY 40504	0406	03/08/2006	KY	N/A
UW PET Imaging Center 8007 Excelsior Drive Madison, WI 53717	1346266319	04/03/2007	WI	N/A
NorCal Imaging - Oakland 3200 Telegraph Avenue Oakland, CA 94609	ZZZ05319Z	08/22/2007	CA	N/A
NorCal Imaging – Walnut Creek 114 La Casa Via Suite #100 Walnut Creek, CA 94598	ZZZ05319Z	08/22/2007	CA	N/A

Aurora Sheboygan Memorial Imaging Center 2629 North 7th Street Sheboygan, WI 53083	520035	05/08/2008	WI	N/A
Aurora Memorial Hospital of Burlington 252 McHenry Street Burlington, WI 53105	520059	05/08/2008	WI	N/A
Aurora Medical Center - Manitowoc County 5000 Memorial Drive Two Rivers, WI 54241	520034	05/08/2008	WI	N/A
St. Mary's Medical Center 2900 First Avenue Huntington, WV 25702	510007	01/29/2009	WV	N/A
Lenox Hill Radiology & Medical Imaging 61 East 77th Street New York, NY 10021	W16681	01/29/2009	NY	N/A
NSMS - Greenville, IL 200 Health Care Drive Greenville, IL 62246	208196	01/29/2009	IL	N/A
Medical Outsourcing Services LLC-Christie Clinic 1801 West Windsor Road Champaign, IL 61821	211224	01/29/2009	IL	N/A
Dakota Radiology 2929 Fifth Street, First Floor Rapid City, SD 57701	1306892708	01/29/2009	SD	N/A
Coffeyville Regional Medical Center 1400 West Fourth Street Coffeyville, KS 67337	1285600379	01/29/2009	KS	N/A
St. Mary Medical Center 1201 Langhorne-Newtown Road Langhorne, PA 19047	390258	01/29/2009	PA	N/A

Medical Imaging Center at Windsor Oaks 1901 SE 18th Avenue Building 200A Ocala, FL 34471	97993	01/29/2009	FL	N/A
Alliance Imaging 2000 Hospital Drive Sedro-Woolley, WA 98284	8862377	01/29/2009	WA	N/A
Watauga Medical Center 336 Deerfield Road Boone, NC 28607	340051	01/29/2009	NC	N/A
Medical Outsourcing Services LLC 315 W. Old Key Dr. Peru, IN 46970	223260	01/29/2009	IN	N/A
Contemporary Imaging Associates 19900 Haggerty Road Suite 101 Livonia, MI 48152	ON63450	01/29/2009	MI	N/A
Greenwich Hospital 5 Perryridge Road Greenwich, CT 06830	70018	01/29/2009	CT	N/A
SMDC Health Systems 400 East Third Street Duluth, MN 55805	8200	01/29/2009	MN	N/A
Harris Regional Hospital 68 Hospital Road Sylva, NC 28779	340016	01/29/2009	NC	N/A
Community Memorial Hospital W180N8085 Town Hall Road Menomonee Falls, WI 53051	1609822881	01/29/2009	WI	N/A
LRI Lincoln Radiology Imaging 7121 Stephanie Lane Lincoln, NE 68516	99920	01/29/2009	NE	N/A
Bristol Hospital Brewster Road Bristol, CT 06010	70029	01/29/2009	CT	N/A

Mount Auburn Hospital 330 Mount Auburn Street Cambridge, MA 02138	220002	01/29/2009	MA	N/A
American Fork Hospital 170 N. 1100 E. American Fork, UT 84003	460023	01/29/2009	UT	N/A
Kentucky Imaging Center 3475 Richmond Road Suite 150 Lexington, KY 40509	1992876981	01/29/2009	KY	N/A
Bay Park Community Hospital 2801 Bay Park Drive Oregon, OH 43616	1457354318	01/29/2009	OH	N/A
Port Huron Hospital 1221 Pine Grove Avenue Port Huron, MI 48060	1457354318	01/29/2009	MI	N/A
Spring Branch Medical Center 8850 Long Point Road Houston, TX 77055	450630	01/29/2009	TX	N/A
Medical Outsourcing Services LLC 2210 Green Valley Road Suite 1 New Albany, IN 47150	248140	01/29/2009	IN	N/A
Medical Outsourcing Services LLC 355 Ridge Avenue Evanston, IL 60202	211222	01/29/2009	IL	N/A
Queens Hospital Center 82-68 164th Street Queens, NY 11432	330231	01/29/2009	NY	N/A
NYOH Mobile PET/CT Amsterdam 1700 Riverfront Center Amsterdam, NY 12010	1609863448	01/29/2009	NY	N/A
Providence Everett Medical Center 1717 13th Street Everett, WA 98201	500014	01/29/2009	WA	N/A

University of Miami/Sylvester Cancer Center 1475 NW 12th Avenue Miami, FL 33136	100079	01/29/2009	FL	N/A
St. Mary's Hospital Medical Center 1726 Shawano Avenue Green Bay, WI 54303	520097	01/29/2009	WI	N/A
Brazosport Regional Health System 100 Medical Drive Lake Jackson, TX 77566	450072	01/29/2009	TX	N/A
Medical Outsourcing Services LLC 1025 Maine Street Quincy, IL 62301	211224	01/29/2009	IL	N/A
The Imaging Center 499 Gloster Creek Village Suite G1 Tupelo, MS 38801	1417907536	01/29/2009	MS	N/A
NSMS - Forrest City, AR 1601 Newcastle Road Forrest City, AR 72336	1295785079	01/29/2009	AR	N/A
Glendale Adventist Medical Cente 1509 Wilson Terrace Glendale, CA 91206	1831188275	01/29/2009	CA	N/A
Mount Sinai Medical Center of Florida, Inc. 4300 Alton Road Miami Beach, FL 33140	100034	01/29/2009	FL	N/A
Cooper University Radiology 900 Centennial Boulevard Voorhees, NJ 08043	17983	01/29/2009	NJ	N/A
George Washington University Hospital 900 23rd Street, NW Washington, DC 10021	90001	01/29/2009	DC	N/A

Galesburg Cottage Hospital 695 N. Kellogg Street Galesburg, IL	1447221312	01/29/2009	IL	N/A
Central Florida Regional Hospital 1401 W. Seminole Boulevard Sanford, FL 32771	100161	01/29/2009	FL	N/A
Feather River Hospital 5974 Pentz Road Paradise, CA 95969	225	01/29/2009	CA	N/A
Caritas PET Imaging, LLC at Cooley Dickinson Hospital 30 Locust Street Northampton, MA 67337	1285846410	01/29/2009	MA	N/A
Shared PET Imaging, LLC for Garden City Hospital 272 West Warren Dearborn Heights, MI	1457354318	01/29/2009	MI	N/A
Florida Hospital Heartland Division -Sebring FL 4200 Sun N Lake Boulevard Sebring, FL 98284	100109	01/29/2009	FL	N/A
Good Samaritan Regional Center 700 E Norwegian Street Pottsville, PA 17901	1427050376	01/29/2009	PA	N/A
Austin Pet and Imaging Center 11044 Research Blvd D-100 Austin, TX 78759	1518928787	01/29/2009	TX	N/A
Ukiah Valley Medical Center 275 Hospital Drive Ukiah, CA 95482	50301	01/29/2009	CA	N/A
Longmont United Hospital 418 E. College Drive Cheyenne, WY 82007	60003	01/29/2009	WY	N/A
Grove City Medical Center 631 N Broad Street Grove City PA 16127	1023000296	01/29/2009	PA	N/A

Fulton Center Health Center 34555 Chagrin Boulevard Cleveland, OH 43567	361333	01/29/2009	OH	N/A
NSMS - Fairfield, IL 303 NW 11th Street Fairfield, IL 62837	1295785097	01/30/2009	IL	N/A
St Helena Hospital 10 Woodland Road St Helena, CA 94574	50013	01/30/2009	CA	N/A
Bayshore Medical Center 4000 Spencer Highway Pasadena, TX 77504	1174576698	01/30/2009	TX	N/A
RedBud Community Hospital 15630 18th Avenue Clearlake, CA 95422	51317	01/30/2009	CA	N/A
Taylor Regional Hospital 125 Greenbriar Drive Campbellsville, KY 42718	180087	01/30/2009	KY	N/A
St. Mary's Medical Center 901 St. Mary's Drive Evansville, IN 47750	150100	01/30/2009	IN	N/A
RUSH University Medical Center 1750 W Harrison Street Jones 106 Chicago, IL 60612	1932213600	01/30/2009	IL	N/A
Parkview Molecular Imaging 2428 Santa Monica Boulevard Suite #302 Santa Monica, CA 90404	G17328A	01/30/2009	CA	N/A
InSight Diagnostic Center 1121 8th Avenue Fort Worth, TX 76104	1932166105	01/30/2009	TX	N/A
Monongahela Valley Hospital 1163 Country Club Road Monongahela, PA 15063	390147	01/30/2009	PA	N/A

Florida Cancer Specialists/ Del Prado 811 Del Prado Boulevard Cape Coral, FL 33990	1760590962	01/30/2009	FL	N/A
MPHS 100 S. San Mateo Drive San Mateo, CA 94403	50007	01/30/2009	CA	N/A
Griffin Hospital 130 Division Street Derby, CT 6418	70031	01/30/2009	CT	N/A
West Jefferson Medical Center 1101 Medical Center Boulevard Marrero, LA 70072	190039	01/30/2009	LA	N/A
Mercy Hospital of Tiffin 485 West Market Street Tiffin, OH 44883	360089	01/30/2009	OH	N/A
Dr. Haroutioun S. Shahinian 10767 Gateway W El Paso, TX 79935	1639184005	01/30/2009	TX	N/A
Holston Valley Medical Center 130 W Ravine Road Kingsport, TN 37660	1457354318	01/30/2009	TN	N/A
Pinnacle Health Imaging at West Hanover 8012 Bretz Drive Harrisburg, PA 17112	390067	01/30/2009	PA	N/A
Indian Path Medical Center 2205 Pavilion Dr Kingsport, TN 37660	1457354318	01/30/2009	TN	N/A
Regional Medical Imaging 2486 Nerredia Flint, MI 48532	1457354318	01/30/2009	MI	N/A
Modesto Radiology Imaging 1524 Mchenry Avenue Suite 100 Modesto, CA 95350	ZZZ18519Z	01/30/2009	CA	N/A
Texas Cancer Clinic 9102 Floyd Curl Drive San Antonio, TX 78240	1316944655	01/30/2009	TX	N/A

Mercy Anderson Hospital 7500 State Road Cincinnati, OH 45255	1457354318	01/30/2009	OH	N/A
Henry Ford Macomb 15855 Nineteen Mile Rd Clinton Township, MI 48038	1457354318	01/30/2009	MI	N/A
Kennedy Outpatient Medical Imaging 900 Medical Center Drive Sewell, NJ 08080	310086	01/30/2009	NJ	N/A
Memorial Hermann Northeast 18955 Memorial North Humble, TX 77338	450684	01/30/2009	TX	N/A
Comprehensive Cancer Center;Cancer Specialists OK 3525 NW 56th Street C150 Oklahoma City, OK 73112	1013090075	01/30/2009	OK	N/A
RIS Lakeland 1305 Lakeland Hills Boulevard Lakeland, FL 33805	584	01/30/2009	FL	N/A
Bayshore Community Hospital 727 North Beers Street Holmdel, NJ 07733	310112	01/30/2009	NJ	N/A
Outpatient Radiology LLC 419 S. Washingont Street Suite 101 Casper, WY 82601	1396704474	01/30/2009	WY	N/A
University Hospital and Medical Center 7201 North University Drive Tamarac, FL 33321	1144274770	01/30/2009	FL	N/A
University Cancer Center, Huntsville 640 Interstate 45 N Huntsville, TX 77340	00Y285	01/30/2009	TX	N/A
San Jacinto Methodist Hospita 4401 Garth Road Baytown, TX 77521	450424	01/30/2009	TX	N/A

University Cancer Center, Brenha 605 Medical Court 101 Brenham, TX 77833	00Y285	01/30/2009	TX	N/A
Methodist Hospital I65 at 21st Street Indianapolis, IN 46206	150056	01/30/2009	IN	N/A
Mount Kisco Medical Group 34 S. Bedford Road Mount Kisco, NY 10549	MO0W067610	01/30/2009	NY	N/A
Danville Regional Medical Center 142 South Main Street Danville, VA 24541	490075	01/30/2009	VA	N/A
Hammond Clinic 9800 Valparaiso Drive Munster, IN 46321	1457354318	01/30/2009	IN	N/A
Alliance Imaging - Auburn Regional Medical Center 202 North Division Street Auburn, WA 98001	8865493	01/30/2009	WA	N/A
University of Connecticut Health Center 263 Farmington Avenue Farmington, CT 06030	300001399	01/30/2009	CT	N/A
Clinch Valley Medical Center 2949 West Front Street Richlands, VA 24641	1871534297	01/30/2009	VA	N/A
St. Mary Corwin Medial Center 1008 Minnequa Avenue Pueblo, CO 81004	840405257	01/30/2009	CO	N/A
Insight Imaging-Saint John's Regional Medical Center 1700 N Rose Avenue Suite 110 Oxnard, CA 93030	TP044	01/30/2009	CA	N/A
Trinity Hospitals 407 3rd Street SE Minot, ND 58701	412002771	01/30/2009	ND	N/A

Morris County Imaging 310 Madison Avenue Morristown, NJ 07960	111293	01/30/2009	NJ	N/A
Lake Norman Regional Medical Center 171 Fairview Road Mooresville, NC 28117	34012	01/30/2009	NC	N/A
Medical Imaging of Fredericksbur 1201 Sam Perry Boulevard Suite 102 Fredericksburg, VA 2240	7242956	01/30/2009	VA	N/A
Medical Outsourcing Services LL 450 Chew Street Allentown, PA 18102	115171	01/30/2009	PA	N/A
Southeastern Regional Medical Center 300 West 27th Street Lumberton, NC 28358	340050	01/30/2009	NC	N/A
Meridian Health, Riverview Medical Center 1 Riverview Plaza Red Bank, NJ 07701	310034	01/30/2009	NJ	N/A
Shands Jacksonville 555 W. 8th Street Jacksonville, FL 32209	100001	01/30/2009	FL	N/A
Advantage Imaging, LLC 3733 Park East Drive Suite 100 Beachwood, OH 44139	1336359686	01/30/2009	OH	N/A
Marlette Regional Hospital 2770 Main Street PO Box 307 Marlette, MI 48453	231330	01/30/2009	MI	N/A
Lewisburg Cancer Center 75 Medical Park Drive Lewisburg, PA 17837	31076	01/30/2009	PA	N/A
New Jersey Diagnostics & Imagin 455 Jack Martin Boulevard Brick, NJ 08724	1710915483	01/30/2009	NJ	N/A

Medical Oncology Associates, P.S 6001 N Mayfair Street Spokane, WA 99208	GAB37015	01/30/2009	WA	N/A
DMS Imaging 10121 Pine Avenue Truckee, CA 96161	ZZZ05188Z	01/30/2009	CA	N/A
Northwest Medical Center 2801 N. State Road 7 Margate, FL 33063	100189	01/30/2009	FL	N/A
St. Joseph Hospital 1907 W. Sycamore Street Kokomo, IN 46904	1780625442	01/30/2009	IN	N/A
Mayo Clinic Jacksonville 4500 San Pablo Road Jacksonville, FL 32224	97325	01/30/2009	FL	N/A
Jewish Hospital 200 East Liberty Street Louisville, KY 40222	1457354318	01/30/2009	KY	N/A
Riverview Hospital Association 410 Dewey Street Wisconsin, Rapids WI 54495	520033	01/30/2009	WI	N/A
Quantum PET - Mt. Nittany Medical Center 1800 East Park Avenue State College, PA 16803	40635	01/30/2009	PA	N/A
Capital Medical Center 3900 Capital mall Drive Olympia, WA 98502	1841258639	01/30/2009	WA	N/A
Treasure Hills Imaging Center 2121 Pease Street Harlingen, TX 78550	FTA0091	01/30/2009	TX	N/A
King's Daughter's Hospital & Health Services One King's Daughters Drive Madison, IN 47250	1457354318	01/30/2009	IN	N/A
St. Luke's Hospital East Campus 85 Grand Avenue Fort Thomas, KY 41075	1457354318	01/30/2009	KY	N/A

Greenview Regional Hospital 1801 Ashley Circle Bowling Green, KY 42104	1457354318	01/30/2009	KY	N/A
TJ Samson Community Hospital 1301 N. Race Street Glasgow KY 42141	1457354318	01/30/2009	KY	N/A
Watson Clinic LLP 1600 Lakeland Hills Boulevard Lakeland FL 33805	162	01/30/2009	FL	N/A
Major Hospital 2455 Inteliplex Drive Shelbyville, IN 46176	1174555692	01/30/2009	IN	N/A
Carroll Precision Imaging Center 680A Poole Road Westminster, MD 21157	1598944761	01/30/2009	MD	N/A
Providence Hospital 16001 West Nine Mile Road PO Box 2043 Southfield, MI 48037	1144210253	01/30/2009	MI	N/A
Lexington Clinic 1221 South Broadway Lexington, KY 40504	169	01/30/2009	KY	N/A
St Francis Hospital 6161 S. Yale Avenue Tulsa, OK 74136	1457354318	01/30/2009	OK	N/A
Kingman Regional Imaging Center 1033 Sycamore Avenue Kingman, AZ 86409	30055	01/30/2009	AZ	N/A
Morrow County Hospital 651 West Marion Road Mount Gilead, OH 43338	361313	01/30/2009	OH	N/A
Alliance Imaging - Gritman Medical Center 700 South Main Street Moscow, ID 83843	17902911	01/30/2009	ID	N/A
Putnam Hospital Center 670 Stoneleigh Avenue Carmel, NY 10512	330273	01/30/2009	NY	N/A

Associated Medical Specialist, PA 817 Farrar Drive Conway, SC 29526	1063432391	01/30/2009	SC	N/A
South Valley Radiology 16633 Ventura Boulevard Suite 120 Encino, CA 91436	W18950	W18950	CA	N/A
Florida Cancer Institute 7651 Medical Drive Hudson, FL 34667	K4006	01/30/2009	FL	N/A
Albemarle Hospital 1144 N Road Street Elizabeth City, NC 27909	340109	01/30/2009	NC	N/A
Carilion New River Valley 2900 Lamb Circle Christiansburg, VA 24073	490042	01/30/2009	VA	N/A
Hope Diagnostic Imaging Center 2202 S. 77th Sunshine Strip Suite E Harlingen, TX 78550	FTNX12	01/30/2009	TX	N/A
Optima Diagnostic Imaging 8900 Wilshire Boulevard Beverly Hills, CA 90211	1659412757	01/30/2009	CA	N/A
John Randolph Medical Center 411 W. Randolph Road Hopewell, VA 23860	490020	01/30/2009	VA	N/A
Salem Hospital 665 Winter Street SE Salem, OR 97301	1265431829	01/30/2009	OR	N/A
Nacogdoches Medical Center 4920 NE Stallings Drive Nacogdoches, TX 75961	450656	01/30/2009	TX	N/A
Fairfield Diagnostic Imaging 1241 River Valley Boulevard Lancaster, OH 43130	1063472884	01/30/2009	OH	N/A
PET Imaging of Thornton 9461 Huron Street Thornton, CO 80260	183123486	01/30/2009	CO	N/A

East Bay Medical Oncology 4721 Dallas Ranch Road Antioch, CA 94513	1932107331	01/30/2009	CA	N/A
MultiCare Health System/ Tacoma General Hospital 316 Martin Luther King Way Tacoma,WA 98405	1366556227	01/30/2009	WA	N/A
University of Wisconsin- Hospital and Clinics 600 Highland Avenue Madison, WI 53792	520098	01/30/2009	WI	N/A
Open MRI and CT of South Miami, LLC 101 NW 1st Avenue Delray Beach, FL 33444	1457405060	01/30/2009	FL	N/A
Dearborn County Hospital 600 Wilson Creek Road Lawrenceburg, IN 47025	150086	01/30/2009	IN	N/A
Alliance Imaging Inc-Desert Imaging 118 Castellano Drive ElPaso, TX 79912	1639357213	01/30/2009	TX	N/A
NSMS - Hamburg, IA 209 Limestone Pass Cottage Grove, WI 53527	1295785079	01/30/2009	WI	N/A
NSMS - Memphis, MO Sigler Avenue RR #1 Box 53 Memphis, MO 63555	1295785079	01/30/2009	MO	N/A
Alliance Imaging - Hematology Oncology 715 W. North Avenue Melrose, Park IL 60160	216057	01/30/2009	IL	N/A
South Miami Hospital 6200 SW 73rd Street Miami, FL 33143	1982688230	01/30/2009	FL	N/A

The PET/CT Center of North Florida 2161 Kingsley Avenue Orange Park, FL 32073	1952320467	01/30/2009	FL	N/A
Ascent Diagnostic Imaging of Tamarac 7180 North University Drive Tamarac, FL 33321	AL571	01/30/2009	FL	N/A
Wilson Medical Center 1705 Tarboro Street SW Wilson, KY 41075	340126	02/02/2009	NC	N/A
Lexington Medical Center 811 W. Main Street Lexington, KY 42141	1457354318	02/02/2009	SC	N/A
Merced MRI 3365 G Street Suite 100 Merced, KY 42104	ZZZ19963Z	02/02/2009	CA	N/A
Memorial Diagnostic Center 2901 Swann Avenue Tampa, FL 33805	100206	02/02/2009	FL	N/A
The PET/CT Center of North Florida 1375 Roberts Road Jacksonville Beach, FL 46176	1932196243	02/02/2009	FL	N/A
The PET/CT Center of North Florida 300 Health Park Boulevard #100 St.Augustine, FL 32086	1861427155	02/02/2009	FL	N/A
Oncology Hematology West, P.C. 17201 Wright Street Suite 100 Omaha, NE 68130	1932178530	02/02/2009	NE	N/A
The PET/CT Center of North Florida 795 SW State Road 47 Lake City, FL 32025	1902893902	02/02/2009	FL	N/A

The PET/CT Center of North Florida 710 Lomax Street Jacksonville, FL 32204	1457529786	02/02/2009	FL	N/A
Provena Saint Joseph Medical Center 2000 Glenwood Avenue Joliet, IL 60435	140007	02/02/2009	IL	N/A
Montgomery County Advanced Medical Imaging, LLC 2701 Blair Mill Road Blairwood Building Suite 3 Willow Grove, PA 19090	1134315369	02/02/2009	PA	N/A
Medical Outsourcing Services LLC One Elizabeth Place Dayton, OH 45408	2391	02/02/2009	OH	N/A
Insight Diagnostic Imaging 750 N. Syringa Street Suite 104 Post Falls, ID 83854	1710089636	02/02/2009	ID	N/A
Hudson Valley Radiology Associates of Westchester 115 Main Street Tuckahoe, NY 10707	1174574115	02/02/2009	NY	N/A
Advocate Illinois Masonic Medical Center 3000 North Halsted Suite 100 Chicago, IL 60657	363196629	02/02/2009	IL	N/A
The PET/CT Center of North Florida 600 Zeagler Drive Palatka, FL 32177	1518986926	02/02/2009	FL	N/A
Baptist Memorial Outpatient Diagnostic Center 504 Azalea Drive Oxford, MS 38655	1053375576	02/02/2009	MS	N/A

Alliance Imaging - Great Falls Clinic 3000 15th Avenue South Great Falls, MT 59405	1790978146	02/02/2009	MT	N/A
Central DuPage Hospital 25 N Winfield Road Winfield, IL 60190	820800	02/02/2009	IL	N/A
Medical Outsourcing Services LLC 4932 W 95th Street Oak Lawn, IL 60453	211222	02/02/2009	IL	N/A
The Cancer Center at Lake Manassas 7901 Lake Manassas Drive Gainesville, VA 20155	1518024934	02/02/2009	VA	N/A
Zwanger-Pesiri Radiology, LLP 80 Maple Avenue Smithtown, NY 11787	W1391	02/02/2009	NY	N/A
Ohio Valey General Hospital 500 Pine Hollow Road McKees Rocks, PA 15136	390157	02/02/2009	OH	N/A
Rockwood Clinic Radiation Oncology 2410 E. Sinto Avenue Spokane Valley, WA 99216	356600	02/02/2009	WA	N/A
Regional West Medical Center 4021 Ave. B Scottsbluff, NE 69361	1639101199	02/02/2009	NE	N/A
DuPage Medical Group at Rickert 1100 W. 31st Street Downers Grove, IL 60515	1801833983	02/02/2009	IL	N/A
Medical Outsourcing Services LLC 2701 W. 68th Street Chicago, IL 60629	211222	02/02/2009	IL	N/A
Presbyterian Kaseman Hospital 8300 Constitution Avenue NE Albuquerque, NM 87110	320021	02/02/2009	NM	N/A

North Kansas City Hospital 2800 Clay Edwards Drive Parkville, MO 64116	260096	02/02/2009	MO	N/A
West Hernando Diagnostic Imaging 3315 Commercial Way Spring Hill, FL 34606	1174668305	02/02/2009	FL	N/A
NSMS - Robinson, IL 1000 N. Allen Street Robinson, IL 62454	1295785079	02/02/2009	IL	N/A
Memorial Hospital 715 South Taft Avenue Fremont OH 43420	360156	02/02/2009	OH	N/A
Samaritan Imaging Center 1245 Wilshire Boulevard Suite 205 Los Angeles, CA 90017	1538258116	02/02/2009	CA	N/A
Aurora West Alllis Medical Center 8901 West Lincoln Avenue West Allis, WI 53227	520139	02/02/2009	WI	N/A
Hematology & Oncology Specialists, LLC 39 Starbrush Circle Covington, LA 70433	5F818	02/02/2009	LA	N/A
DDIS-PB 3250 Westchester Avenue Bronx, NY 10461	w30661	02/02/2009	NY	N/A
Toledo Clinic, Inc. 4235 Secor Road Toledo, OH 43623	1144217894	02/02/2009	OH	N/A
CDSA 1421 Third Avenue New York, NY 10028	1982700951	02/02/2009	NY	N/A
Cancer Care Centers of South Texas 2130 NE Loop 410 Suite 100 San Antonio, TX 78217	1225064603	02/02/2009	TX	N/A

Saddleback Memorial Medical Center 24451 Healthcenter Drive Laguna Hills, CA 92653	50603	02/02/2009	CA	N/A
Marshfield Clinic 2116 Craig Road Eau Claire, WI 54701	390452970	02/02/2009	WI	N/A
Liberty Pacific Advanced Imaging 16130 Ventura Boulevard Encino, CA 91436	1962457812	02/02/2009	CA	N/A
SimonMed Imaging, Inc. 20830 N Tatum Blvd Suite 190 Phoenix, AZ 85050	1164460077	02/02/2009	AZ	N/A
Marshfield Clinic - Rice Lake Center 1700 West Stout Street Rice Lake, WI 54868	5090	02/02/2009	WI	N/A
Ingham Regional Medical Center 401 W. Greenlawn Avenue Lansing, MI 48910	230167	02/02/2009	MI	N/A
Space Coast Medical Associates LLP 490 N. Washington Avenue Titusville, FL 32796	1558329581	02/02/2009	FL	N/A
Ascent Diagnostic Imaging of Jacksonville 5210 Belfort Road Suite 130 Jacksonville, FL 32256	AL744	02/02/2009	FL	N/A
Milford Regional Medical Center 12 Prospect Street Milford, MA 01757	1477527497	02/02/2009	MA	N/A
The Cancer Team Bellin Health 1580 Commanche Avenue Green Bay, WI 54313	ESO114	02/02/2009	WI	N/A

Community Cance Center of North Florida 7000 NW 11th Place Gainsville, FL 32605	1205858354	02/02/2009	FL	N/A
Epic Care Dublin 6380 Clark Avenue Dublin, CA 94568	ZZZ39149Z	02/02/2009	CA	N/A
Cornerstone McLaughlin & Marte 3850 Tampa Road Palm Harbor, FL 44718	1174668305	02/03/2009	FL	N/A
Methodist Dallas Medical Center 1441 N. Beckley Avenue Dallas, TX 75203	1457354318	02/03/2009	TX	N/A
Methodist Charlton Medical Center 3500 W. Wheatland Road Dallas, TX 75737	1457354318	02/03/2009	TX	N/A
Riverview Hospital 395 Westfield Road Nobelsville, IN 46060	1457354318	02/03/2009	IN	N/A
North Bay Imaging 625 W. Baldwin Road Panama City, FL 32405	1639208366	02/03/2009	FL	N/A
University Medical Center 602 Indiana Avenue Lubbock, TX 79413	1821087164	02/03/2009	TX	N/A
Toms River X-Ray/CT/MRI Center 154 Highway 37 W Toms River, NJ 08755	540379	02/03/2009	NJ	N/A
St. Mary's Hospital Imaging Department 25500 Point Lookout Road Leonardtown, MD 20650	210028	02/03/2009	MD	N/A
Banner Good Samaritan PET Center 1111 E. McDowell Road Phoenix AZ 85006	H0016	02/03/2009	AZ	N/A

Saint Luke's Northland Hospital 4320 Wornall Road Suite 328 Kansas City, MO 64111	111111	02/03/2009	MO	N/A
Carmichael Imaging 6620 Coyle Avenue Suite 110 Carmichael, CA 95608	941694584	02/03/2009	CA	N/A
Phoebe Putney Memorial Hospital 2709 Meredyth Drive Albany, GA 31707	1710147210	02/03/2009	GA	N/A
Trinity MedicalCenter 800 Montclair Road Birmingham, AL 35213	10104	02/03/2009	AL	N/A
Diagnostic Clinic 1551 West Bay Drive Largo, FL 33770	36	02/03/2009	FL	N/A
Titus Regional Medical Center 2001 North Jefferson Avenue Mount Pleasant, TX 75455	1174526529	02/03/2009	TX	N/A
Snow Canyon Clinic 272 East Center Street Ivins, UT 84738	1235185645	02/03/2009	UT	N/A
Conway Medical Center 300 Singleton Ridge Road, PO Box 829 Conway, SC 29526	1134172000	02/03/2009	SC	N/A
Nazha Cancer Center 801 New Road Northfield, NJ 08225	1063698959	02/03/2009	NJ	N/A
CHRISTUS Central Louisiana Imaging Center 3704 North Boulevard Alexandria, LA 71301	190019	02/03/2009	LA	N/A
Cobre Valley Community Hospital 5880 S. Hospital Drive Globe, AZ 85501	31314	02/03/2009	AZ	N/A

Wuesthoff X-Ray and Lab at Baytree 7970 N. Wickham Road Melbourne, FL 32940	1538298344	02/03/2009	FL	N/A
Avera Holy Family 826 North 8th Street Estherville, IA 51334	1508810177	02/03/2009	IA	N/A
Hannibal Regional Hospital 6000 Hospital Drive Hannibal, MO 63401	260025	02/03/2009	MO	N/A
Alliance Imaging Dreyer Clinic 1221 North Highland Avenue Aurora, IL 60506	1235282344	02/03/2009	IL	N/A
Cancer Care 11100 Hefner Pointe Drive Oklahoma City, OK 73120	1295785392	02/03/2009	OK	N/A
Fisher-Titus Medical Center 272 Benedict Avenue Norwalk, OH 44857	360065	02/03/2009	OH	N/A
Oaklawn Hospital 200 North Madison Street Marshall, MI 49068	230217	02/03/2009	MI	N/A
Dixie Regional Medical Center 544 South 400 East St. George, UT 84790	460021	02/03/2009	UT	N/A
New Jersey Institute of Radiology 630 Broad Street Carlstadt, NJ 07072	115568	02/03/2009	NJ	N/A
Medical Diagnostic Imaging 4349 Treadaway Boulevard Abilene, TX 79602	1730387911	02/03/2009	TX	N/A
Richmond 2900 Richmond Avenue Houston, TX 77098	1730132234	02/03/2009	TX	N/A

Lafayette General Medical Center-LGI 1211 Coolidge Blvd Suite 201 Lafayette, LA 70503	1275536799	02/03/2009	LA	N/A
Ohio Cancer Specialists 1125 Aspira Court Mansfield, OH 44906	1316917040	02/03/2009	OH	N/A
Vantage Diagnostic Imaging 3400 W. Hefner Road Oklahoma City, OK 73120	400522173	02/03/2009	OK	N/A
Health Diagnostics 455 Hickey Boulevard #200 Daly City, CA 94015	1467611467	02/03/2009	CA	N/A
Physicians for Cure 795 SW State Road 47 Lake City, FL 32025	1770739104	02/03/2009	FL	N/A
Arkansas Cancer Center PET/CT 9601 Lile Drive Suite 106 Little Rock, AR 72205	1477535391	02/03/2009	AR	N/A
Southeast Georgia Health System 2415 Parkwood Drive Brusnwick, GA 31520	110025	02/03/2009	GA	N/A
Illinois Valley Community Hospital 925 West Street Peru, IL 61354	1457354318	02/03/2009	IL	N/A
Oncology Hematology Associates of Southwest IN 3699 Epworth Road Newburgh, IN 47630	1710150222	02/03/2009	IN	N/A
Sam Houston Cancer Center 112 Medical Park Lane Huntsville, TX 77340	00Z337	02/03/2009	TX	N/A
Silicon Valley Medical Imaging 2191 Mowry Avenue Suite 500-H Fremont, CA 94538	1376730358	02/03/2009	CA	N/A

RADS (Radiology and Diagnostic Services) 7160 W. 20th Avenue Suite M126 Hialeah, FL 33016	100187	02/03/2009	FL	N/A
Kaweah Delta Imaging Center 4949 W. Cypress Avenue Visalia, CA 93277	1588663769	02/03/2009	CA	N/A
University of South AL Mitchell Cancer Institute 1660 Springhill Avenue Mobile, AL 36604	H398	02/03/2009	AL	N/A
Murray-Calloway County Hospital 803 Poplar Street Murray, KY 42071	1073504981	02/03/2009	KY	N/A
Arizona Center for Hematology and Oncology 14674 W. Mountain View Boulevard #113 Surprise, AZ 85374	Z31627	02/03/2009	AZ	N/A
Wake Radiology Diagnostic Imaging, Inc. 300 Ashville Avenue Suite 180 Cary, NC 27518	1538123450	02/03/2009	NC	N/A
The Vancouver Clinic 700 NE 87th Avenue Vancouver, WA 98686	685900	02/03/2009	WA	N/A
Bronx-Lebanon Hospital Center 1650 Grand Concourse Bronx, NY 10457	1558461962	02/03/2009	NY	N/A
Evergreen Hemtology & Oncology, P.S. 309 E. Farwell Road Suite 100 Spokane, WA 99218	1255592218	02/03/2009	WA	N/A

NSMS - Parsons, KS 1902 59 Highway South Parsons, KS 67357	1295785079	02/03/2009	KS	N/A
Florida Cancer Specialists-Cornerstone 3850 Tampa Road Palm Harbor, FL 34684	1760590962	02/03/2009	FL	N/A
Town Center Imaging 21 Hospital Drive Suite 130 Palm Coast, FL 32164	1558530006	02/03/2009	FL	N/A
Memorial Hospital Of Carbondale 405 W. North Avenue Carbondale, IL 62901	1093801797	02/03/2009	IL	N/A
Herrin Hospital 201 South 14th Street Herrin, IL 62948	1093801797	02/03/2009	IL	N/A
Laughlin Memorial Hospital 1420 Tusculum Boulevard Greeneville, TN 37745	1881669778	02/03/2009	TN	N/A
Quantum PET - Hanover Hospital 300 Highland Avenue Hanover, PA 17331	40635	02/03/2009	PA	N/A
Parrish Medical Center 941 North Washington Avenue Titusville, FL 32796	1053424648	02/03/2009	FL	N/A
California Diagnostic Imaging Center, Inc. 828 South Grand Suite 107 Glendoro, CA 91740	TP113	02/03/2009	CA	N/A
NorCal Imaging - Pleasanton 5924 Stoneridge Drive Pleasanton, CA 94588	1578687166	02/03/2009	CA	N/A
Sadler Clinic 9305 Pinecroft Drive The Woodlands, TX 77380	1114979127	02/03/2009	TX	N/A

Medical Center Hospital 500 West 4th Street Odessa, TX 79760	450132	02/03/2009	TX	N/A
Cascade Medical Imaging 2500 NE Neff Road Bend, OR 97701	1194994145	02/03/2009	OR	N/A
Palos Community Hospital 15300 West Avenue Orland Park, IL 60462	1124276332	02/03/2009	IL	N/A
Lemmen Holton Cancer Pavilion 145 Michigan Street, NE Grand Rapids, MI 49503	230038	02/03/2009	MI	N/A
Houston Cancer Institute 1220 Blalock Suite 100 Houston, TX 77055	00N55X	02/03/2009	TX	N/A
Hudson Valley Hematology - Oncology Associates 19 Baker Avenue Suite 100 Poughkeepsie, NY 12601	1275615809	02/03/2009	NY	N/A
North Shore Radiology at Glen Cove, PC 10 Medical Plaza Suite 106 Glen Cove, NY 11542	1003024662	02/03/2009	NY	N/A
Cape Radiology 4011 Route 9 South PO Box 244 Rio Grande, NJ 08242	1972592194	02/03/2009	NJ	N/A
Frederick Imaging Centers, LLC 46 B Thomas Johnson Drive Suite 100 Frederick, MD 21702	1063699940	02/03/2009	MD	N/A
EP Medical Imaging Technology 10767 Gateway West Suite 520 El Paso, TX 79935	1508987165	02/03/2009	TX	N/A

Atlantis Diagnostics 1344 S. Apollo Boulevard Melbourne, FL 32901	1053382457	02/03/2009	FL	N/A
Tri-City PETCT at Vista 902 Sycamore Avenue #120 Vista, CA 92081	1154580348	02/03/2009	CA	N/A
Florida Cancer Specialists/Sarasota Downtown 1970 Golf Street Sarasota, FL 34236	1760590962	02/03/2009	FL	N/A
Arizona Oncology Associates - Biltmore 2222 East Highland Avenue Suite 130 Phoenix, AZ 85016	1235193459	02/03/2009	AZ	N/A
Las Vegas Radiology 7500 Smoke Ranch Suite 100 Las Vegas, NV 89128	1972714970	02/03/2009	NV	N/A
Medical Outsourcing Services 2900 W. 16th Street Bedford, IN 47421	1700812294	02/03/2009	IN	N/A
Town Center Imaging 21 Hospital Drive Suite 130 Palm Coast, FL 32164	1558530006	02/03/2009	FL	N/A
Memorial Hospital Of Carbondale 405 W. North Avenue Carbondale,IL 62901	1093801797	02/03/2009	IL	N/A
Herrin Hospital 201 South 14th Street Herrin, IL 62948	1093801797	02/03/2009	IL	N/A
Laughlin Memorial Hospital 1420 Tusculum Boulevard Greeneville, TN 37745	1881669778	02/03/2009	TN	N/A

Quantum PET - Hanover Hospital 300 Highland Avenue Hanover, PA 17331	40635	02/03/2009	PA	N/A
Parrish Medical Center 941 North Washington Avenue Titusville, FL 32796	1053424648	02/03/2009	FL	N/A
California Diagnostic Imaging Center, Inc. 828 South Grand Suite 107 Glendoro, CA 91740	TP113	02/03/2009	CA	N/A
NorCal Imaging - Pleasanton 5924 Stoneridge Drive Pleasanton, CA 94588	1578687166	02/03/2009	CA	N/A
Sadler Clinic 9305 Pinecroft Drive The Woodlands, TX 77380	1114979127	02/03/2009	TX	N/A
Medical Center Hospital 500 West 4th Street Odessa, TX 79760	450132	02/03/2009	TX	N/A
Cascade Medical Imaging 2500 NE Neff Road Bend, OR 97701	1194994145	02/03/2009	OR	N/A
Palos Community Hospital 15300 West Avenue Orland Park, IL 60462	1124276332	02/03/2009	IL	N/A
Lemmen Holton Cancer Pavilion 145 Michigan Street, NE Grand Rapids, MI 49503	230038	02/03/2009	MI	N/A
Houston Cancer Institute 1220 Blalock Suite 100 Houston, TX 77055	00N55X	02/03/2009	TX	N/A
Hudson Valley Hematology - Oncology Associates 19 Baker Avenue Suite 100 Poughkeepsie, NY 12601	1275615809	02/03/2009	NY	N/A

North Shore Radiology at Glen Cove, PC 10 Medical Plaza Suite 106 Glen Cove, NY 11542	1003024662	02/03/2009	NY	N/A
Cape Radiology 4011 Route 9 South PO Box 244 Rio Grande, NJ 08242	1972592194	02/03/2009	NJ	N/A
Frederick Imaging Centers, LLC 46 B Thomas Johnson Drive Suite 100 Frederick, MD 21702	1063699940	02/03/2009	MD	N/A
EP Medical Imaging Technology 10767 Gateway West Suite 520 El Paso, TX 79935	1508987165	02/03/2009	TX	N/A
Atlantis Diagnostics 1344 S Apollo Boulevard Melbourne, FL 32901	1053382457	02/03/2009	FL	N/A
Tri-City PETCT at Vista 902 Sycamore Avenue #120 Vista, CA 92081	1154580348	02/03/2009	CA	N/A
Florida Cancer Specialists/Sarasota Downtown 1970 Golf Street Sarasota, FL 34236	1760590962	02/03/2009	FL	N/A
Arizona Oncology Associates - Biltmore 2222 East Highland Avene Suite 130 Phoenix, AZ 85016	1235193459	02/03/2009	AZ	N/A
Las Vegas Radiology 7500 Smoke Ranch Suite 100 Las Vegas, NV 89128	1972714970	02/03/2009	NV	N/A
Medical Outsourcing Services 2900 W. 16th Street Bedford, IN 47421	1700812294	02/03/2009	IN	N/A

Addendum XIII
Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities
[July Through September 2009]

On October 1, 2003, we issued our decision memorandum on ventricular assist devices for the clinical indication of destination therapy. We determined that ventricular assist devices used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.

VAD Destination Therapy Facilities

The following facilities have met the CMS facility standards for destination therapy VADs.

Facility	Provider Number	Date Approved	State	Other Information
Advocate Christ Medical Center 4440 W 95th Street Oak Lawn, Illinois	140208	12/17/2003	IL	Joint Commission Certified on 05/26/2007
California Pacific Medical Center 2333 Buchanan Street San Francisco, California	050047	03/19/2004	CA	
Baptist Memorial Hospital 6019 Walnut Grove Road Memphis, Tennessee	440048	04/07/2004	TN	
Duke University Medical Center DUMC Box 3943 Durham, North Carolina	340030	10/31/2003	NC	
Fairview-University Medical Center 2450 Riverside Avenue Minneapolis, Minnesotta	240080	10/28/2003	MN	
Allegheny General Hospital 320 E North Avenue Pittsburgh, Pennsylvania	390050	12/10/2003	PA	Joint Commission Certified on 03/28/2008
Barnes-Jewish Hospital One Barnes-Jewish Hospital Plaza Saint Louis, Missouri	260032	10/27/2003	MO	Joint Commission Certified on 08/22/2008

Brigham and Women's Hospital 15 Francis Street Boston, Massachusetts	220110	01/09/2004	MA	
Bryan LGH Medical Center East 1600 S 48 Street Lincoln, Nebraska	280003	10/23/2003	NE	
Cedars-Sinai Medical Center 8700 Beverly Boulevard Los Angeles, California	050625	12/29/2003	CA	
Clarian Health Partners, Inc. 1701 N. Senate Avenue Indianapolis, Indiana	150056	11/25/2003	IN	
Cleveland Clinic 9500 Euclid Avenue Cleveland, Ohio	360180	12/03/2003	OH	
Hahnemann University Hospital Broad and Vine Streets Philadelphia, Pennsylvania	390290	12/22/2003	PA	Joint Commission Certified on 09/19/2008
Hospital of the University of Pennsylvania 3400 Spruce Street Philadelphia, Pennsylvania	390111	10/28/2003	PA	Joint Commission Certified on 05/23/2008
Henry Ford Hospital 2799 W. Grand Boulvard Detroit, Michigan	230053	01/06/2004	MI	
Inova Fairfax Hospital 3300 Gallows Road Falls Church, Virginia	490063	03/31/2004	VA	

Jewish Hospital 200 Abraham Flexner Way Louisville, Kentucky	180040	11/10/2003	KY	
Jackson Memorial Hospital 1611 NW 12th Avenue Miami, Florida	100022	01/12/2004	FL	University of Miami
LDS Hospital 8th Avenue and C Street Salt Lake City, Utah	460010	10/23/2003	UT	
Johns Hopkins Hospital 600 N. Wolfe Street Baltimore, Maryland	210009/1790700904	10/28/2003	MD	Joint Commission Certified on 07/09/2008
Loyola University Medical Center 2160 S. 1st Avenue Maywood, Illinois	140276	01/30/2004	IL	
Lutheran Hospital of Indiana 7950 W. Jefferson Boulevard Fort Wayne, Indiana	150017	10/29/2003	IN	
Massachusetts General Hospital 55 Fruit Street Boston, Massachusetts	220071	12/15/2003	MA	
Mayo Clinic 4500 San Pablo Road Jacksonville, Florida	100151	11/06/2003	FL	
Medical City Dallas Hospital 7777 Forest Lane Dallas, Texas	450647	12/03/2003	TX	

The Methodist Hospital 6565 Fannin Street Houston, Texas	450358	11/03/2003	TX	
Montefiore Medical Center 111 E. 210th Street Bronx, New York	330059	11/14/2003	NY	
Methodist Specialty and Transplant Hospital 8026 Floyd Curl Drive San Antonio, Texas	450388	11/19/2003	TX	
Newark Beth Israel Medical Center 201 Lyons Avenue Newark, New Jersey	310002	11/14/2003	NJ	
Mount Sinai Medical Center 1190 5th Avenue New York, New York	330024	11/25/2003	NY	
New York-Presbyterian Hospital 177 Fort Washington Avenue New York, New York	330101	10/28/2003	NY	Columbia University Medical Center
Ohio State University Medical Center 410 W. 10th Avenue Columbus, Ohio	360085	11/12/2003	OH	
Oregon Health and Sciences University 3181 SW Sam Jackson Park Road Portland, Oregon	380009	11/21/2003	OR	
OSF St Francis Medical Center 530 NE Glen Oak Avenue Peoria, Illinois	140067	11/12/2003	IL	

Penn State Milton S Hershey Medical Center 500 University Drive Hershey, Pennsylvania	390256	10/29/2003	PA	Joint Commission Certified on 05/19/2008
Rush-Presbyterian-St Luke Medical Center 1653 W Congress Parkway Chicago, Illinois	140119	11/14/2003	IL	
Sentara Norfolk General Hospital 600 Gresham Drive Norfolk, Virginia	490007	11/10/2003	VA	
Sacred Heart Medical Center 101 W 8th Avenue Spokane, Washington	500054	01/12/2004	WA	
Seton Medical Center 1201 W. 38th Street Austin, Texas	450056	01/13/2004	TX	
Shands at the University of Florida 1600 SW Archer Road Gainesville, Florida	100113	11/26/2003	FL	
Sharp Memorial Hospital 7901 Frost Street San Diego, California	050100	12/01/2003	CA	Joint Commission Certified on 07/18/2008
Stanford University Hospital and Clinics 300 Pasteur Drive Stanford, California	050441	12/22/2003	CA	Stanford University Medical Center
St Francis Hospital 6161 S. Yale Avenue Tulsa, Oklahoma	370091	01/09/2004	OK	

St Luke's Medical Center 2900 W Oklahoma Avenue Milwaukee, Wisconsin	520138	11/03/2003	WI	
St Luke's Episcopal Hospital 6720 Bertner Avenue Houston, Texas	450193	10/28/2003	TX	
St Vincent Hospital and Health Services 2001 W. 86th Street Indianapolis, Indiana	150084	01/05/2004	IN	
St Paul Medical Center 5909 Harry Hines Boulevard Dallas, Texas	450044	12/10/2003	TX	
Strong Memorial Hospital 601 Elmwood Avenue Rochester, New York	330285	10/29/2003	NY	Joint Commission Certified on 06/18/2008
Tampa General Hospital 2 Columbia Drive Tampa, Florida	100128	11/26/2003	FL	
Temple University Hospital 3401 N. Broad Street Philadelphia, Pennsylvania	390027	11/03/2003	PA	
Tufts-New England Medical Center 750 Washington Street Boston, Massachusetts	220116	11/06/2003	MA	
UCLA Medical Center 10833 Le Conte Avenue Los Angeles, California	050262	12/10/2003	CA	

University Medical Center 1501 N. Campbell Avenue Tucson, Arizonia	030064	10/29/2003	AZ	
University of Alabama at Birmingham Health System 500 22nd Street S Birmingham, Alabama	010033	10/29/2003	AL	
University of Colorado Hospital 4200 E. Ninth Avenue Denver, Colorado	060024	11/06/2003	CO	9th & Colorado Campus Joint Commission Certified on 07/23/2008
The University of Chicago Hospitals and Health System 5841 South Maryland Avenue Chicago, Illinois	140088	02/25/2004	IL	
University of Iowa Hospitals and Clinics 200 Hawkins Drive Iowa City, Iowa	160058	11/12/2003	IA	
University of Maryland Medical Center 22 S. Greene Street Baltimore, Maryland	210002	11/12/2003	MD	
University of Michigan Health System 1500 E. Medical Center Drive Ann Arbor, Michigan	230046	10/27/2003	MI	Joint Commission Certified on 03/28/2008
University of North Carolina Hospitals 101 Manning Drive Chapel Hill, North Carolina	340061	05/05/2004	NC	

University of Utah Hospital 50 N Medical Drive Salt Lake City, Utah	460009	12/22/2003	UT	
University of Virginia Health System 1215 Lee Street Charlottesville, Virginia	490009	01/12/2004	VA	
University of Washington Medical Center 1959 NE Pacific Street Seattle, Washington	500008	01/15/2004	WA	
University of Wisconsin Hospitals and Clinics 600 Highland Avenue Madison, Wisconsin	520098	12/03/2003	WI	
USC University Hospital 1500 San Pablo Los Angeles, California	050696	01/09/2004	CA	
UPMC Presbyterian 200 Lothrop Street Pittsburgh, Pennsylvania	390164	10/23/2003	PA	Joint Commission Certified on 06/11/2008
Virginia Commonwealth University Medical Center 401 North 12th Street Richmond, Virginia	490032	04/08/2004	VA	Medical College of Virginia Hospitals
Vanderbilt University Medical Center 1161 21st Avenue S Nashville, Tennessee	440039	10/28/2003	TN	
Ochsner Clinic Foundation 1514 Jefferson Highway New Orleans, Louisiana	190036	06/29/2004	LA	

Baylor University Medical Center 3500 Gaston Avenue Dallas, TX	N/A	10/04/2007	TX	Joint Commission Certified on 10/04/2007
The University of Michigan Hospitals and Health Centers 1500 East Medical Center Drive Ann Arbor, MI	230046	03/28/2008	MI	Joint Commission Certified on03/28/200/
Saint Mary's Hospital 1216 Southwest Second Street Rochester, MN	N/A	02/27/2008	MN	Joint Commission Certified on 02/27/2008
Allegheny General Hospital 320 East North Avenue Pittsburgh, PA	N/A	03/08/2008	PA	
Washington Hospital Center 110 Irving Street, NW Washington, DC	09-0011	04/23/2008	DC	Joint Commission Certified on 04/23/2008
Integris Baptist Medical Center 3300 Northwest Expressway Oklahoma City, OK	1831103654	08/13/2008	OK	Joint Commission Certified on 08/13/08
Mayo Clinic Hospital 5777 East Mayo Boulevard Phoenix, AZ	030103	02/27/2009	AZ	Joint Commission Certified on 02/27/09
Northwestern Memorial Hospital 251 E. Huron Street Chicago, IL	140281	03/17/2009	IL	Joint Commission Certified on 03/17/09
Lancaster General Hospital 555 North Duke Street Lancaster, PA	390100	05/20/2009	PA	Joint Commission certified on 05/20/09

Hartford Hospital 80 Seymour Street Hartford, CT	070025	05/29/2009	CT	Joint Commission certified on 05/29/09
Morristown Memorial Hospital 100 Madison Avenue Morristown, NJ	310015	06/17/09	NJ	Joint Commission certified on 6/17/09
Thomas Jefferson University Hospital 111 South 11th Street Philadelphia, PA	390174	08/05/09	PA	Joint Commission certified on 8/5/09
Emory University Hospital 1364 Clifton Road Atlanta, GA	110010	08/19/09	GA	Joint Commission certified on 8/19/09

Addendum XIV
Lung Volume Reduction Surgery (LVRS)
[July Through September 2009]

Three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS): National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs), Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS, and Medicare approved for lung transplants. Only the first two types are in the list.

Facility name	Date approved	State	Type of Certification
Baylor College of Medicine Houston, Texas	N/A	TEXAS	NETT
Brigham and Women's Hospital Boston, MA	N/A	MASSACHUSETTS	NETT
Cedars-Sinai Medical Center Los Angeles, CA	N/A	CALIFORNIA	NETT
Chapman Medical Center Orange, CA	N/A	CALIFORNIA	NETT
Cleveland Clinic Foundation Cleveland, OH	N/A	OHIO	NETT

Columbia University New York, NY	N/A	NEW YORK	NETT
Duke University Medical Center Durham, NC	N/A	NORTH CAROLINA	NETT
Johns Hopkins Hospital Baltimore, MD	N/A	MARYLAND	NETT
Kaiser Foundation Hospital - Riverside Riverside, CA	09/20/2006	CALIFORNIA	Joint Commssion
Long Island Jewish Medical Center New Hyde Park, NY	N/A	NEW YORK	NETT
Mayo Clinic Rochester, MN	N/A	MINNESOTA	NETT
Memorial Medical Center Springfield, IL	12/13/2006	ILLINOIS	Joint Commssion
National Jewish Medical Center Denver, CO	N/A	COLORADO	NETT
The Ohio State University Hospital Columbus, OH	N/A	OHIO	Joint Commssion
Ohio State University Medical Center Columbus, OH	N/A	OHIO	NETT
Saint Louis University Saint Louis, MO	N/A	MISSOURI	NETT
Temple University Hospital Philadelphia, PA	08/23/2008	PENNSYLVANIA	Joint Commission
UCLA Medical Center Los Angeles, CA	N/A	CALIFORNIA	NETT
University of California, San Diego San Diego, CA	N/A	CALIFORNIA	NETT

University of Maryland Medical Center Baltimore, MD	N/A	MARYLAND	NETT
University of Michigan Medical Center Ann Arbor, MI	N/A	MICHIGAN	Joint Commission
University of Pennsylvania Philadelphia, PA	N/A	PENNSYLVANIA	NETT
University of Pittsburgh Pittsburgh, PA	N/A	PENNSYLVANIA	NETT
University of Washington Seattle, WA	N/A	WASHINGTON	NETT
Washington University/Barnes Hospital Saint Louis, MO	N/A	MISSOURI	Joint Commission
Allegheny General Hospital Pittsburgh, PA	04/23/2008	PENNSYLVANIA	Joint Commission

Addendum XV—Medicare-Approved Bariatric Surgery Facilities

On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity, and have been previously unsuccessful with medical treatment for obesity.

This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

The following facilities have met our minimum facility standards for bariatric surgery and have been certified by American College of Surgeons (ACS) or American Society for Metabolic and Bariatric Surgery (ASMBS).

Facility Name	Provider Number	Date Approved	State	Other Information
Evanston Northwestern Hospital 2650 Ridge Avenue Suite 1308 Evanston, IL 60201	140010	01/26/2006	IL	ACS
Chapman Medical Center 2601 East Chapman Avenue Orange, CA 92646	05-0745	02/21/2006	CA	ASMBS
St Vincent Carmel Hospital 13430 Old Meridian Street Suite 168 Carmel, IN 46032	15-0157	02/21/2006	IN	ASMBS
Abbott Northwestern Hospital 800 E. 28th Street Minneapolis, MN 55407	N/A	02/24/2006	MN	ASMBS
Alexian Brothers Medical Center 800 Biesterfield Road Elk Grove Village, IL 60007	N/A	02/24/2006	IL	ASMBS
American Bariatric Institute at Doctors' Hospital 1130 Louisiana Avenue Shreveport, LA 71101	N/A	02/24/2006	LA	ASMBS
Arnot Ogden Medical Center 600 Fitch Street Elmira, NY 14905	330090	02/24/2006	NY	ASMBS

AtlantiCare Regional Medical Center 2500 English Creek Avenue Egg Harbor Township, NJ 08234	N/A	02/24/2006	NJ	Center for Surgical Weight Loss and Wellness Salartash Surgical Associates ASMBS
Atlanta Medical Center 303 Parkway Drive NE Atlanta, GA 30312	N/A	02/24/2006	GA	ASMBS
Aurora Sinai Medical Center 945 N. 12th Street Milwaukee, WI 53211	N/A	02/24/2006	WI	ASMBS
Baptist Memorial Hospital North Mississippi 2301 South Lamar Boulevard Oxford, MS 38655	N/A	02/24/2006	MS	ASMBS
Bellin Health 215 N. Webster Avenue Green Bay, WI 54301	N/A	02/24/2006	WI	ASMBS
Bon Secours Community Hospital 160 E. Main Street Port Jervis, NY 12771	N/A	02/24/2006	NY	ASMBS
California Pacific Medical Center 2333 Buchanan Street San Francisco, CA 94115	N/A	02/24/2006	CA	ASMBS
Cape Fear Valley Health System 1638 Owen Drive Fayetteville, NC 28304	N/A	02/24/2006	NC	ASMBS
Centennial Center for the Treatment of Obesity 2300 Patterson Street Nashville, TN 37203	N/A	02/24/2006	TN	ASMBS

Cleveland Clinic Hospital-Weston 3100 Weston Road Weston, FL 33331	N/A	02/24/2006	FL	ASMBS
Christus Schumpert Health System 1 Saint Mary Place Shreveport, LA 71101	N/A	02/24/2006	LA	ASMBS
Citizen's Bariatric Center 2701 Hospital Avenue Victoria, TX 77901	N/A	02/24/2006	TX	ASMBS
Columbia-St. Mary's Bariatric Center 2025 E. Newport Avenue Milwaukee, WI 53211	N/A	02/24/2006	WI	ASMBS
Community Hospital Monterey Peninsula 23625 Holman Highway Monterey, CA 93940	N/A	02/24/2006	CA	ASMBS
Crestwood Medical Center One Hospital Drive Huntsville, AL 35801	N/A	02/24/2006	AL	ASMBS
Cypress Fairbanks Medical Center Hospital 10655 Steepletop Drive Houston, TX 77065	450716	02/24/2006	TX	ASMBS
Danbury Hospital 24 Hospital Avenue Danbury, CT 06810	N/A	02/24/2006	CT	ACS
East Texas Medical Center 1000 S. Beckman Avenue Tyler, TX 75701	N/A	02/24/2006	TX	ASMBS

Eastern Maine Medical Center 905 Union Street EMH Mall Suite 11 Bangor, ME 04401	200033	02/24/2006	ME	ASMBS
Elmbrook Memorial Hospital 19333 W. North Avenue Brookfield, WI 53045	N/A	02/24/2006	WI	ASMBS
Emory Dunwoody Medical Center 4575 N. Shallowford Road Atlanta, GA 30338	N/A	02/24/2006	GA	ASMBS
Florida Hospital Celebration Health 400 Celebration Place Kissimmee, FL 34747	N/A	02/24/2006	FL	ASMBS
Florida Medical Center 4850 W. Oakland Boulevard Lauderdale Lakes, FL 33313	N/A	02/24/2006	FL	ASMBS
Froedtert Memorial Lutheran Hospital 9200 W. Wisconsin Avenue Milwaukee, WI 53226	N/A	02/24/2006	WI	Medical College of Wisconsin ASMBS
Frye Regional Medical Center 420 N. Center Street Hickory, NC 28601	N/A	02/24/2006	NC	ASMBS
Geisinger Medical Center 100 North Academy Avenue Danville, PA 17822	390006	N/A	PA	ASMBS- 02/24/2006 ACS-01/26/2007
Good Samaritan Hospital 375 Dixmyth Avenue Cincinnati, OH 45220	N/A	02/24/2006	OH	ASMBS

Grandview Medical Center 405 Grand Avenue Dayton, OH 45405	N/A	02/24/2006	OH	ASMBS
Greater Baltimore Medical Center 6701 N. Charles Street Baltimore, MD 21204	N/A	02/24/2006	MD	ASMBS
Hamilton Medical Center 1200 Memorial Drive Dalton, GA 30720	N/A	02/24/2006	GA	ASMBS
Hennepin County Medical Center 701 Park Avenue Minneapolis, MN 55415	N/A	02/24/2006	MN	ASMBS
Holy Cross Hospital 4725 N. Federal Highway Fort Lauderdale, FL 33308	N/A	02/24/2006	FL	ASMBS
Hospital of Saint Raphael 1450 Chapel Street New Haven, CT 06511	N/A	02/24/2006	CT	ASMBS
Huntington Memorial Hospital 100 W. California Boulevard Pasadena, CA 91105	N/A	02/24/2006	CA	ASMBS
Jupiter Medical Center 1210 S. Old Dixie Highway Jupiter, FL 33458	N/A	02/24/2006	FL	ASMBS
King's Daughters Medical Center 617 23rd Street Ashland, KY 41101	N/A	02/24/2006	KY	ASMBS

Legacy Good Samaritan Hospital and Medical Center 1015 NW 22nd Avenue Portland, OR 97210	N/A	02/24/2006	OR	ASMBS
Lexington Medical Center 2720 Sunset Boulevard West Columbia, SC 29169	N/A	02/24/2006	SC	ASMBS
Little Company of Mary 2800 W. 95th Street Evergreen Park, IL 60805	N/A	02/24/2006	IL	ASMBS
Lutheran Medical Center 150 55th Street Brooklyn, NY 11220	29D361	02/24/2006	NY	ACS
Medical University of South Carolina 171 Ashley Avenue Charleston, SC 29425	N/A	02/24/2006	SC	ASMBS
Memorial Hermann Hospital 6411 Fannin Street Houston, TX 77030	N/A	02/24/2006	TX	ASMBS
Memorial Hospital 2525 DeSales Avenue Chattanooga, TN 37404	N/A	02/24/2006	TN	ASMBS
Mercy Hospital Miami 3663 South Miami Avenue Miami, FL 33133	N/A	02/24/2006	FL	ASMBS
Mercy San Juan Medical Center 6501 Coyle Avenue Carmichael, CA 95608	N/A	02/24/2006	CA	ASMBS

Metabolic Surgery Center at Baptist Hospital 2011 Church Street Nashville, TN 37203	N/A	02/24/2006	TN	ASMBS
Methodist Dallas Medical Center PO Box 655999 Dallas, TX 75265-5999	N/A	02/24/2006	TX	Texas Bariatric Center ASMBS
Methodist Healthcare System 8109 Fredricksburg Road San Antonio, TX 78229	N/A	02/24/2006	TX	ASMBS
Methodist Hospital 6500 Excelsior Boulevard Saint Louis Park, MN 55426	N/A	02/24/2006	MN	ASMBS
Middlesex Hospital 28 Crescent Street Middletown, CT 06457	N/A	02/24/2006	CT	ASMBS
Methodist Hospital of Southern California 300 West Huntington Drive Arcadia, CA 91007	N/A	02/24/2006	CA	ASMBS
Mills-Peninsula Health Services 1783 El Camino Real Burlingame, CA 94010	N/A	02/24/2006	CA	ASMBS
New Hanover Regional Medical Center 2131 S. 17th Street Wilmington, NC 28401	N/A	02/24/2006	NC	ASMBS

New York Methodist Hospital 506 Sixth Street Brooklyn, NY 11215	N/A	02/24/2006	NY	ASMBS
North Hills Hospital 4401 Booth Calloway Road North Richland Hills, TX 76180	N/A	02/24/2006	TX	ASMBS
North Colorado Medical Center 1801 16th Street Greeley, CO 80631	N/A	02/24/2006	CO	ASMBS
North Vista Hospital 1409 E. Lake Mead Boulevard North Las Vegas, NV 89101	N/A	02/24/2006	NV	ASMBS
Northeast Georgia Health System, Inc. 743 Spring Street NE Gainesville, GA 30501	N/A	02/24/2006	GA	ASMBS
NorthEast Medical Center 920 Church Street N. #302E Concord, NC 28025	N/A	02/24/2006	NC	ASMBS
Northwestern Memorial Hospital 215 E. Huron Street, NE Chicago, IL 60611	N/A	02/24/2006	IL	Northwestern Medical Faculty Foundation ASMBS
Ocala Regional Medical Center 1431 SW 1st Street Ocala, FL 34474	N/A	02/24/2006	FL	ASMBS
Palms of Pasadena Hospital 1501 Pasedena Avenue St. Petersburg, FL 33707	N/A	02/24/2006	FL	ASMBS
Orange Coast Memorial Medical Center 9920 Talbert Avenue Fountain Valley, CA 92708	N/A	02/24/2006	CA	ASMBS
Parkwest Medical Center 9352 Park West Boulevard Knoxville, TN 37923	N/A	02/24/2006	TN	ASMBS

Penrose-St. Francis Health Services 825 E. Pikes Peak Avenue Colorado Springs, CO 80917	N/A	02/24/2006	CO	ASMBS
Poudre Valley Hospital 1024 S. Lemay Avenue Fort Collins, CO 80524	N/A	02/24/2006	CO	ASMBS
Presbyterian-St. Luke's Medical Center 1719 E. 19th Avenue Denver, CO 80218	N/A	02/24/2006	CO	ASMBS
Princeton HealthCare System 253 Witherspoon Street Princeton, NJ 08540	N/A	02/24/2006	NJ	ASMBS
Roger Williams Medical Center 825 Chalkstone Avenue Providence, RI 02908	N/A	02/24/2006	RI	Drs. Lentrichia & Pohl, Inc. ASMBS
Rose Medical Center 4545 E. 9th Avenue, #470 Denver, CO 80220	N/A	02/24/2006	CO	ASMBS
Saint Barnabas Medical Center 94 Old Short Hills Road Livingston, NJ 07039	N/A	02/24/2006	NJ	ASMBS
Saint Francis Hospital 5959 Park Avenue Memphis, TN 38119	N/A	02/24/2006	TN	ASMBS
St. Francis Hospital - Franciscan Health System 34515 Ninth Avenue S. Federal Way, WA 98003	N/A	02/24/2006	WA	N/A
Saint Joseph East Center for Weight Loss 160 N. Eagle Creek Drive Lexington, KY 40509	N/A	02/24/2006	KY	ASMBS

Saint Mary's Regional Medical Center 234 W. 6th Street Reno, NV 89503	N/A	02/24/2006	NV	ASMBS
Saint Mary's Hospital 5801 Bremo Road Richmond, VA 23226	N/A	02/24/2006	VA	ASMBS
Scottsdale Healthcare Shea Campus 900 E. Shea Boulevard Scottsdale, AR 85260	N/A	02/24/2006	AZ	ASMBS
Scripps Memorial 9888 Genesee Avenue La Jolla, CA 90237	N/A	02/24/2006	CA	ASMBS
Scripps Mercy Hospital 4077 Fifth Avenue San Diego, CA 92103	N/A	02/24/2006	CA	ASMBS
Sentara Careplex Hospital 3000 Coliseum Drive Hampton, VA 23666	N/A	02/24/2006	VA	ASMBS
Sinai Hospital of Baltimore 2401 W. Belvedere Avenue Baltimore, MD 21215	N/A	02/24/2006	MD	Sinai Surgical Associates ASMBS
Sisters of Charity Hospital 2130 Main Street Buffalo, NY 14214	N/A	02/24/2006	NY	ASMBS
Sioux Valley Hospital USD Medical Center 1305 W. 18th Street Sioux Falls, SD 57105	N/A	02/24/2006	SD	ASMBS
Sound Shore Medical Center of Westchester 16 Guion Place New Rochelle, NY 10801	N/A	02/24/2006	NY	ASMBS

South Nassau Communities Hospital 1 Healthy Way Oceanside, NY 11572	N/A	02/24/2006	NY	ASMBS
Southwest Healthcare System 36485 Inland Valley Drive Wildomar, CA 92595	N/A	02/24/2006	CA	ASMBS
Southwest Medical Center 2810 Ambassador Caffery Parkway Lafayette, LA 70506	N/A	02/24/2006	LA	ASMBS
Spectrum Health Blodgett Campus 1840 Wealthy Street, SE Grand Rapids, MI 49506	N/A	02/24/2006	MI	MMPC Center for Health Excellence ASMBS
SSM DePaul Health Center 12303 DePaul Avenue Bridgeton, MO 63044	N/A	02/24/2006	MO	ASMBS
St. Joseph's Area Health Services 600 Pleasant Avenue Park Rapids, MN 56470	N/A	02/24/2006	MN	ASMBS
St. Vincent Charity Hospital 2322 E. 22nd Street #220 Cleveland, OH 44115	N/A	02/24/2006	OH	ASMBS
Staten Island University Hospital 475 Seaview Avenue Staten Island, NY 10305	N/A	02/24/2006	NY	ASMBS
Theda Clark Medical Center 200 Theda Clark Medical Plaza Suite 410 Neenah, WI 54956	000071445	02/24/2006	WI	ACS

The Ohio State University Hospital 410 W. 10th Avenue Columbus, OH 43210	N/A	02/24/2006	OH	ASMBS
The Regional Medical Center at Memphis 877 Jefferson Avenue Memphis, TN 38103	N/A	02/24/2006	TN	ASMBS
Tri-City Regional Medical Center 21530 Pioneer Boulevard Hawaiian Gardens, CA 90716	N/A	02/24/2006	CA	ASMBS
United Hospital 333 North Smith Avenue Saint Paul, MN 55102	N/A	02/24/2006	MN	ASMBS
United Regional Health Care System 1600 19th Street Wichita Falls, TX 76301	N/A	02/24/2006	TX	ASMBS
Unity Hospital 550 Osborne Road, NE Fridley, MN 55432	N/A	02/24/2006	MN	ASMBS
University of Chicago Hospitals 5841 S. Maryland Avenue Chicago, IL 60637	N/A	02/24/2006	IL	University of Chicago Department of Surgery ASMBS
University of Minnesota Medical Center, Fairview 2450 Riverside Avenue Minneapolis, MN 55454	24-0080	02/24/2006	MN	ASMBS
UPMC St. Margaret 815 Freeport Road Pittsburgh, PA 15215	N/A	02/24/2006	PA	ASMBS
UPMC Horizon 110 North Main Street Greenville, PA 16125	N/A	02/24/2006	PA	ASMBS

Virginia Commonwealth University Medical Center Richmond, VA 23284	N/A	02/24/2006	VA	ASMBS
Vanderbilt University Medical Center 1211 22nd Avenue S. Nashville, TN 37232	N/A	02/24/2006	TN	ASMBS
Weight Loss Surgery Program at Baylor 9101 N. Central Expressway Suite 370 Dallas, TX 75231	N/A	02/24/2006	TX	ASMBS
Wellstar Health Systems 677 Church Street, NE Marietta, GA 30060	N/A	02/24/2006	GA	ASMBS
White Plains Hospital Center 190 E. Post Road White Plains, NY 10601	N/A	02/24/2006	NY	ASMBS
York Hospital 1001 S. George Street York, PA 17403	N/A	02/24/2006	PA	ASMBS
Norman Regional Hospital 901 North Porter, Box 1308 Norman, OK 73070	370008	03/22/2006	OK	ASMBS
St. Luke's Medical Center 1800 E. Van Buren Suite 307B Phoenix, AZ 85006	030037	03/22/2006	AZ	Abdominal Surgeons, Ltd. ASMBS
Silver Cross Hospital 1200 Maple Road Joliet, IL 60432	140213	03/22/2006	IL	Midwest Comprehensive Bariatrics ASMBS
Tampa General Hospital 2 Columbia Drive, F145 Tampa, FL 33601	100128	03/22/2006	FL	University of South Florida ASMBS

Spartanburg Regional Healthcare System 101 East Wood Street Spartanburg, SC 29303	420007	03/27/2006	SC	ASMBS
OSF Saint Francis Medical Center 530 NE Glen Oak Avenue Peoria, IL 61637	140067	04/05/2006	IL	ASMBS
Palmetto Health Baptist 1850 Laurel Street, Suite 1A Columbia, SC 29201	420086	04/05/2006	SC	ASMBS
Peconic Bay Medical Center 1300 Roanoke Avenue Riverhead, NY 11901	330107	04/06/2006	NY	ASMBS
Desert Springs Hospital 2075 East Flamingo Las Vegas, NV 89119	290022	04/07/2006	NV	ASMBS
Palmetto General Hospital 2001 West 68th Street Hialeah, FL 33016	100187	04/11/2006	FL	ASMBS
Hurley Medical Center One Hurley Plaza Flint, MI 48503-5993	230132	04/14/2006	MI	ACS
University of California, Davis 2315 Stockton Boulevard Sacramento, CA 95817	N/A	04/18/2006	CA	ASMBS
Russell County Medical Carroll and Tate Streets Lebanon, VA 24266	N/A	04/27/2006	VA	ASMBS
Western Pennsylvania Hospital 4800 Friendship Avenue Pittsburgh, PA 15224	028672	N/A	PA	ASMBS- 05/01/2006 ACS-10/16/2006
Banner Good Samaritan Bariatric Center 1300 North 12th Street Suite 610 Phoenix, AZ 85006	N/A	05/04/2006	AZ	ASMBS

Bothwell Regional Health Center 601 East 14th Street Sedalia, MO 65301	N/A	05/17/2006	MO	ASMBS
Durham Regional Hospital 3643 N. Roxboro Road Durham, NC 27704	N/A	05/17/2006	NC	ASMBS
Fairview Southdale Hospital 6405 France Avenue Street Suite W320 Edina, MN 55435	N/A	05/17/2006	MN	ASMBS
Cleveland Clinic 9500 Euclid Avenue (A80) Cleveland, OH 44195	360180	N/A	OH	05/24/2006-ASMBS 12/01/2006-ACS
St. Agnes Healthcare 900 Caton Avenue Baltimore, MD 21229	210011	05/24/2006	MD	ASMBS
Sycamore Hospital 2150 Leiter Road Miamisburg, OH 45342	360239	05/24/2006	OH	ASMBS
Albany Medical Center 47 New Scotland Avenue Albany, NY 12208	330013	06/02/2006	NY	ACS
Georgetown Community Hospital 1140 Lexington Road Georgetown, KY 40324	180101	06/07/2006	KY	ASMBS
Fletcher Allen Health Care 111 Colchester Avenue Burlington, VT 05401	N/A	06/09/2006	VT	Hospital: 470003 Group Provider: VN0997 ACS
New York-Presbyterian Hospital/Columbia University Medical Center 622 W. 168th Street New York, NY 10032	330101	06/14/2006	NY	ACS

Providence Memorial Hospital 2001 North Oregon Street El Paso, TX 79902	450668	06/15/2006	TX	ASMBS
UT Southwestern University Hospitals-Zale Lipshy 5909 Harry Hines Boulevard Dallas, TX 75390	450766	06/19/2006	TX	ASMBS
Cedars-Sinai Medical Center 8700 Beverly Boulevard Los Angeles, CA 90048	N/A	06/20/2006	CA	Thalians-2W ACS
Community Medical Center-Clovis 2755 Herndon Avenue Clovis, CA 93611	050492	N/A	CA	ACS-06/26/2006 ASMBS-12/07/2006
Oregon Health & Science University 3181 SW Sam Jackson Park Road L223A Portland, OR 97239	See other information	06/27/2006	OR	OHSU Medical Group-107708 OHSU Hospital-380009 ACS
Hospital of the University of Pennsylvania 3400 Spruce Street, 4 Silverstein Philadelphia, PA 19104	N/A	07/06/2006	PA	ASMBS
Swedish Medical Center 501 East Hampden Avenue Englewood, CO 80113	060034	07/06/2006	CO	ASMBS
Blount Memorial Hospital 907 East Lamar Alexander Parkway Maryville, TN 37801	440011	07/11/2006	TN	ASMBS
University of Virginia Health System PO Box 800809 Charlottesville, VA 22908-0809	490009	07/12/2006	VA	ACS

Sewickley Valley Hospital 720 Blackburn Road Sewickley, PA 15143	390037	07/13/2006	PA	ASMBS
The Christ Hospital 2139 Auburn Avenue Cincinnati, OH 45219	360163	07/17/2006	OH	ASMBS
Cabell Huntington Hospital 1340 Hal Greer Boulevard Huntington, WV 25701	510055	07/19/2006	WV	ASMBS
Mount Sinai Hospital One Gustave L. Levy Place 1190 5th Avenue New York, NY 10029	330024	07/25/2006	NY	ASMBS
UMass Memorial Medical Center-Memorial Campus 119 Belmont Street Worcester, MA, 01605	A22819	07/27/2006	MA	ACS
Henry Ford Hospital 2799 West Grand Boulevard Detroit, MI 48202	N/A	07/31/2006	MI	ASMMBS
Vista Surgical Hospital 9094 Perkins Road Suite B Baton Rouge, LA 70810	230053	07/31/2006	LA	ASMBS
Town & Country Hospital 6001 Webb Road Tampa, FL 33615	100255	08/02/2006	FL	ASMBS
New York-Presbyterian Hospital/Weill Cornell Medical Center 630 West 168th Street New York, NY 10032	330101	08/04/2006	NY	ACS

Centinela Freeman Regional Medical Center 4650 Lincoln Boulevard Marin del Rey, CA 90292	050741	08/07/2006	CA	ASMBS
NYU Medical Center 560 First Avenue New York, NY 10016	330214	08/08/2006	NY	ASMBS
Regional West Medical Center 4021 Avenue B Scottsbluff, NE 69361	280061	08/08/2006	NE	ASMBS
Mercy Medical Center 1000 North Village Avenue Rockville Centre, NY 11570	N/A	08/10/2006	NY	ASMBS
Brigham and Women's Hospital 75 Francis Street Boston, MA 02115-6195	M20830	08/14/2006	MA	ACS
St. Catherine of Sienna Medical Center 48 Route 25A Smithtown, NY 11787	316495	08/28/2006	NY	ASMBS
Highland Hospital 1000 South Avenue Rochester, NY 14620	330164	08/30/2006	NY	ACS
Inova Fair Oaks Hospital 3600 Joseph Siewick Drive Fairfax, VA 22033	490101	08/31/2006	VA	ASMBS
Our Lady of Lourdes Medical Center 1600 Haddon Avenue Camden, NJ 08104	613039	08/31/2006	NJ	ASMBS

FirstHealth Moore Regional Hospital 155 Memorial Drive Pinehurst, NC 27374	340115	09/01/2006	NC	ASMBS
Hamot Medical Center 201 State Street Erie, PA 16550	390063	09/01/2006	PA	ASMBS
St. Alexius Hospital - NewStart 3933 South Broadway Street St. Louis, MO 63118	260210	09/01/2006	MO	ASMBS
St. Catherine of Siena Medical Center 50 Route 25A Smithtown, NY 11787	316495	09/01/2006	NY	ASMBS
Barnes Jewish Hospital One Barnes-Jewish Hospital Plaza St. Louis, MO 63110	260032	09/06/2006	MO	ASMBS
Baptist Memorial Hospital Memphis 6025 Walnut Grove Road Memphis, TN 38120	440048	09/07/2006	TN	ASMBS
Norwalk Hospital 24 Stevens Street Norwalk, CT 06856	070034	09/07/2006	CT	ASMBS
North Shore University Hospital at Manhasset 300 Community Drive Manhasset, NY 11530	330106	09/08/2006	NY	ASMBS

St. Vincent's Medical Center 2800 Main Street Bridgeport, CT 06606	070028	09/08/2006	CT	Level 3-Department of Surgery ASMBS
Faxton-St. Luke's Healthcare 1656 Champlin Avenue Utica, NY 13503	330044	09/14/2006	NY	ASMBS
St. Joseph's Hospital 69 West Exchange St. Paul, MN 55102	N/A	09/14/2006	MN	ASMBS
Johns Hopkins Bayview Medical Center 4940 Eastern Avenue Baltimore, MD 21224	210029	09/15/2006	MD	ASMBS
University Hospitals of Cleveland 11100 Euclid Avenue Cleveland, OH 44106	N/A	09/15/2006	OH	ASMBS
Yale-New Haven Hospital 20 York Street New Haven, CT 06510	070022	09/20/2006	CT	ASMBS
Avera McKennan Hospital 800 East 21st Street, Box 5045 Sioux Falls, SD 57117-5045	430016	09/25/2006	SD	ASMBS
Memorial Hospital Jacksonville 3625 University Boulevard South Jacksonville, FL 32216	100179	09/26/2006	FL	ASMBS
Fountain Valley Regional Hospital 17100 Euclid Street Fountain Valley, CA 92708	050570	09/27/2006	CA	ASMBS
Sentara Norfolk General Hospital 600 Gresham Drive Norfolk, VA 23507	4900073	09/29/2006	VA	ACS

St. Mary's Medical Center 450 Stanyan Street San Francisco, CA 94117	050457	10/02/2006	CA	ASMBS
Trinity Medical Center 800 Montclair Road Birmingham, AL 35213	010104	10/03/2006	AL	ASMBS
MeritCare Health System 720 4th Street North Fargo, ND 58122	350011	10/11/2006	ND	ASMBS
St. Lukes's/Roosevelt 1090 Amsterdam Avenue New York, NY 10025	330046	10/11/2006	NY	10th Floor ACS
Benefis Healthcare 1101 26th Street South Great Falls, MT 59405	270012	10/13/2006	MT	ASMBS
Mason General Hospital 901 Mountain View Drive Shelton, WA 98584	501336	10/13/2006	WA	ASMBS
Norton Hospital 200 East Chestnut Louisville, KY 40202	180088	10/16/2006	KY	ASMBS
Port Huron Hospital 1221 Pine Grove Avenue Port Huron, MI 48060	230216	10/16/2006	MI	ASMBS
Harper University Hospital 3990 John R. Street Detroit, MI 48201	230104	10/17/2006	MI	ASMBS
St. Luke Hospital 7380 Turfway Road Florence, KY 41042	180045	10/18/2006	KY	ASMBS
Twelve Oaks Medical Center Hospital 4200 Twelve Oaks Drive Houston, TX 77027	N/A	10/18/2006	TX	ASMBS
Cleveland Clinic Florida 3100 Weston Road Weston, FL 33331-3602	100289	10/19/2006	FL	ACS

Grinnell Regional Medical Center 210 Fourth Avenue Grinnell, IA 50112	N/A	10/19/2006	IA	Provider Numbers: Hospital: 160147, Surgical Group: 03108 ACS
Conway Medical Services 300 Singleton Ridge Road Conway, SC 29528	420049	10/11/2006	SC	ASMBS
Alta Bates Medical Center 350 Hawthorne Avenue Oakland, CA 94609	050043	10/23/2006	CA	ASMBS
Massachusetts General Hospital 55 Fruit Street Boston, MA 02114-2696	220071	10/23/2006	MA	ACS
Mayo Clinic-Saint Mary's Hospital 200 First Street SW Rochester, MN 55905	N/A	10/23/2006	MN	SMH: 24-0010 Part B General Medical: C01384 ACS
Saint Francis Hospital 6465 South Yale Avenue, #900 Tulsa, OK 74136	372308	10/23/2006	OK	ACS
Newton-Wellesley Hospital 2014 Washington Street Newton, MA 02462	220101	10/26/2006	MA	ACS
Mobile Infirmary Medical Center 5 Mobile Infirmary Circle Mobile, AL 36007	010113	10/27/2006	AL	ASMBS
Maine Medical Center 22 Bramhall Street Portland, ME 04102	200009	11/06/2006	ME	ASMBS
Magee Womens Hospital of UPMC 3000 Halket Street Pittsburgh, PA 15213	390114	11/13/2006	PA	ASMBS

Saint Francis Hospital and Medical Center 114 Woodland Street Hartford, CT 06105	070002	11/15/2006	CT	ASMBS
South Jersey Healthcare-Regional Medical Center 1505 West Sherman Avenue Vineland, NJ 08360	310032	11/20/2006	NJ	ASMBS
Overlook Hospital 99 Beauvoir Avenue Summit, NJ 07902	310051	11/21/2006	NJ	Nursing Administration Office ASMBS
Cedars Medical Center 1400 Northwest 12th Avenue Miami, FL 33136	100009	11/23/2006	FL	ASMBS
Memorial Hermann Memorial City Hospital 921 Gessner Road Houston, TX 77024	450610	11/27/2006	TX	ASMBS
Tufts-New England Medical Center 750 Washington Street Boston, MA 02111	220116	11/27/2006	MA	ASMBS
Allegheny General Hospital 320 East North Avenue Pittsburgh, PA 15212	390050	11/30/2006	PA	Fifth Floor, South Tower ASMBS
Northwest Medical Center 2801 North State Road 7 Margate, FL 33063	100189	11/30/2006	FL	ASMBS
Potomac Hospital 2300 Opitz Boulevard Woodbridge, VA 22191	490113	11/30/2006	VA	ASMBS
Baptist Health Medical Center - Little Rock 9601 I-630, Exit 7 Little Rock, AR 72205	040114	12/01/2006	AR	ASMBS

University of Washington Medical Center 1959 NE Pacific Street PO Box 356151 Seattle, WA 98195-6151	1326002049	12/05/2006	WA	ACS
St. Luke's Regional Medical Center 333 North 1st Street Suite 120 Boise, ID 83702	130006	12/06/2006	ID	ASMBS
University of Alabama at Birmingham Hospital 1530 3rd Avenue South Kracke Building 404 Birmingham, AL 35294-0016	010033	12/07/2006	AL	ACS
Hackensack University Medical Center 30 Prospect Avenue Hackensack, NJ 07601	310001	12/08/2006	NJ	ACS
Hialeah Hospital 651 East 25th Street Hialeah, FL 33013	100053	12/13/2006	FL	ASMBS
Sts. Mary and Elizabeth Hospital 1850 Bluegrass Avenue Louisville, KY 40215	180040	12/15/2006	KY	Bariatric Office ASMBS
Bon Secours Surgical Weight Loss-Maryview Medical Center 3636 High Street Portsmouth, VA 23707	490017	12/18/2006	VA	ASMBS
Pomerado Hospital 15615 Pomerado Road Poway, CA 92064	050636	12/18/2006	CA	ASMBS
Boston Medical Center 88 E. Newton Street D507-Department of Surgery Boston, MA 02118	220031	12/19/2006	MA	ACS

Medcenter One, Inc. 300 North 7th Street Bismarck, ND 58501	350015	12/19/2006	ND	ASMBS
Meriter Hospital 202 South Park Street Madison, WI 53715	520089	12/19/2006	WI	ASMBS
University of Wisconsin Hospital & Clinics 600 Highland Avenue Madison, WI 53792	520098	12/19/2006	WI	ASMBS
Women and Children's Hospital 4200 Nelson Road Lake Charles, LA 70605	190201	12/19/2006	LA	ASMBS
Mount Carmel West Hospital 793 West State Street Columbus, OH 43222	360035	12/20/2006	OH	ASMBS
Southcoast Hospitals Group-Tobey Hospital 43 High Street Wareham, MA 02571	220074	12/21/2006	MA	ASMBS
Carilion Roanoke Memorial Hospital 1906 Belleview Avenue Roanoke, VA 24014	N/A	12/26/2006	VA	ASMBS
Mercy General Health Partners 1500 Sherman Boulevard Muskegon, MI 49444	230004	12/26/2006	MI	ASMBS
Mountainside Hospital 1 Bay Avenue Montclair, NJ 07042	310054	12/26/2006	NJ	ASMBS
Park Plaza Hospital 1313 Hermann Drive Houston, TX 77004	450659	01/09/2007	TX	ASMBS

Renaissance Hospital Houston 2807 Little York Houston, TX 77093	450795	01/12/2007	TX	ASMBS
Penn State Milton S. Hershey Medical Center 500 University Drive Hershey, PA 17033	390256	01/18/2007	PA	ASMBS
Shawnee Mission Medical Center 9100 West 74th Street Shawnee Mission, KS 66204	170104	01/24/2007	KS	ASMBS
Morristown Memorial Hospital 100 Madison Avenue Morristown, NJ 07962	31-0015	01/25/2007	NJ	ACS
Alvarado Hospital 6655 Alvarado Road San Diego, CA 92120	050583	01/26/2007	CA	Alvarado Surgical Weight-Loss Program ASMBS
St. Francis Hospital 7th and Clayton Streets Wilmington, DE 19805	080003	01/29/2007	DE	ASMBS
Sacred Heart Medical Center 101 West 8th Avenue Spokane, WA 99220	500054	02/05/2007	WA	ASMBS
Ochsner Clinic Foundation 1514 Jefferson Highway New Orleans, LA 70121	190036	02/06/2007	LA	ASMBS
Northwest Specialty Hospital 1593 East Polston Avenue Post Falls, ID 83854	130066	02/07/2007	ID	ASMBS
Sacred Heart Hospital 421 Chew Street Allentown, PA 18102	390197	02/07/2007	PA	ASMBS
Rio Grande Regional Hospital 101 East Ridge Road McAllen, TX 78503	450711	02/12/2007	TX	ASMBS

Gundersen Lutheran Medical Center 1900 South Avenue La Crosse, WI 54601	520087	02/13/2007	WI	ASMBS
Kettering Medical Center 3535 Southern Boulevard Kettering, OH 45429	360079	02/16/2007	OH	ASMBS
Beth Israel Deaconess Medical Center 330 Brookline Avenue Boston, MA 02215	N/A	02/17/2006	MA	ACS
Shady Grove Adventist Hospital 9901 Medical Center Drive Rockville, MD 20850	210057	02/19/2007	MD	ASMBS
Pitt County Memorial Hospital 2100 Stantonsburg Road Greenville, NC 27835	340040	02/20/2007	NC	ASMBS
St. Cloud Hospital 1406 Sixth Avenue, North St. Cloud, MN 56303	240036	02/23/2007	MN	ASMBS
Virginia Mason Medical Center 1100 Ninth Avenue Seattle, WA 98101	500005	03/01/2007	WA	ASMBS
Southeast Georgia Health System 2415 Parkwood Drive Brunswick, GA 31520	110025	03/06/2007	GA	ASMBS
Baystate Medical Center 759 Chestnut Street Springfield, MA 01199	220077	03/13/2007	MA	ACS
PinnacleHealth Community Campus 4300 Londonderry Road c/o PO Box 8700 Harrisburg, PA 17109	390067	03/29/2007	PA	ASMBS

The Valley Hospital 223 North Van Dien Avenue Ridgewood, NJ 07450	310012	03/30/2007	NJ	ASMBS
Charleston Area Medical Center 800 Pennsylvania Avenue Charleston, WV 25302	510022	04/16/2007	WV	ASMBS
Presbyterian Hospital of Dallas 8200 Walnut Hill Lane Dallas, TX 75231	450462	04/16/2007	TX	ASMBS
Dekalb Medical Center 2701 North Decatur Road Decatur, GA 30033	110076	04/26/2007	GA	ASMBS
St. Francis Health Center 1700 SW 7th Street Topeka, KS 66606	170016	04/26/2007	KS	ASMBS
St. Mark's Hospital 1200 East 3900 South Salt Lake City, UT 84124	47007	04/26/2007	UT	ASMBS
Faulkner Hospital 1153 Centre Street Boston, MA 02130	220119	04/27/2007	MA	ACS
George Washington University Hospital 9000 23rd Street NW Washington, DC 20037	090001	08/14/2006	DC	ASMBS

William Beaumont Hospital – Royal Oak 3601 West Thirteen Mile Road Royal Oak, MI 48073-6769	230130	04/20/2007	MI	ACS
University Medical Center at Princeton 253 Witherspoon Street Princeton, NJ 08542	N/A	02/24/2006	NJ	ASMBS
Del Sol Medical Center 10201 Gateway West Suite 130 El Paso, TX 79925	45-0646	05/03/2007	TX	ACS
Winchester Hospital 41 Highland Avenue Winchester, MA 01890	220105	05/31/2007	MA	ASMBS
Lawrence Memorial Hospital – Hallmark Health System 170 Governors Avenue Medford, MA 02155	220070	05/31/2007	MA	ASMBS
The Methodist Hospital 6565 Fannin, NB1-001 Houston, TX 77030	450358	03/22/2007	TX	ACS
ValleyCare Health System 1111 East Stanley Boulevard Livermore, CA 94550	050283	06/07/2007	CA	ASMBS
The Presbyterian Hospital 200 Hawthorne Lane Charlotte, NC 28204	340053	06/06/2007	NC	ASMBS
Nix Hospital 414 Navarro Street San Antonio, TX 78205	450130	06/08/2007	TX	ASMBS

Huntsville Hospital 101 Sivley Road Huntsville, AL 35801	010039	05/11/2007	AL	ASMBS
The Jewish Hospital 4777 Galbraith Road Cincinnati, OH 45236	360016	06/07/2007	OH	ASMBS
UCI Medical Center 101 The City Drive South Orange, CA 92868	050348	05/25/2007	CA	ACS
Kaiser Permanente Medical Center Richmond 901 Nevin Avenue Richmond, CA 94801	050075	05/24/2007	CA	ACS
Green Hospital 12395 El Camino Real San Diego, CA 92130	050424	06/21/2007	CA	ASMBS
Sutter Roseville Medical Center One Medical Plaza Roseville, CA 95661	050309	06/22/2007	CA	ASMBS
Munroe Regional Medical Center 1500 Southwest 1st Avenue Ocala, FL 34471	100062	06/05/2007	FL	ASMBS
Enloe Medical Center 251 Cohasset Road Chico, CA 95926	050039	06/11/2007	CA	ASMBS
St. Francis Hospital & Health Centers 1600 Albany Street Beech Grove, IN 46107	150033	06/15/2007	IN	ASMBS
Southern Surgical Hospital 1700 West Lindberg Drive Slidell, LA 70458	190270	06/21/2007	LA	ASMBS

Creighton University Medical Center 601 North 30th Street Omaha, NE 68131	280030	06/20/2007	NE	ASMBS
Peninsula Regional Medical Center 100 East Carroll Street Salisbury, MD 21801	210019	06/20/2007	MD	ASMBS
Wadley Regional Medical Center 1000 Pine Street Texarkana, TX 75501	450200	06/08/2007	TX	ASMBS
Vista Medical Center Hospital 4301 Vista Road Pasadena, TX 77504	450831	06/22/2007	TX	ASMBS
St. David's Medical Center 919 East 32nd Street Austin, TX 78705	450531	06/22/2007	TX	ASMBS
Sanford USD Medical Center 1305 West 18th Street Sioux Falls, SD 57117	430027	01/17/2006	SD	ASMBS
Weight Loss Surgery Program at Baylor 3600 Gaston Avenue Suite 360 Wadley Tower Dallas, TX 75246	N/A	06/20/2007	TX	ASMBS
Shelby Baptist Medical Center 1000 First Street N. Alabaster, AL 35007	010016	05/18/2007	AL	ACS
Lehigh Valley Hospital and Health Network Cedar Crest & I-78 PO Box 689 Allentown, PA 18105-1556	390133	05/29/2007	PA	ACS
West Hills Hospital 7300 Medical Center Drive West Hills, CA 91307	050481	06/27/2007	CA	ASMBS

Adirondack Medical Center 2233 State Route 86 Saranack Lake, NY 12983	330079	06/26/2007	NY	ASMBS
Middletown Regional Hospital 105 McKnight Drive Middletown, OH 45044	360076	06/25/2007	OH	ASMBS
Kaleida Health, Buffalo General 100 High Street Buffalo, NY 14203	300005	06/25/2007	NY	ASMBS
Miami Valley Hospital One Wyoming Street Dayton, OH 45409	N/A	06/25/2007	OH	ASMBS
Minimally Invasive Surgery Hospital 11217 Lakeview Avenue Lenexa, KS 66219	N/A	06/25/2007	KS	ASMBS
Saint Agnes Medical Center 1303 E. Herndon Avenue Fresno, CA 93720	05-0093	07/24/2007	CA	ASMBS
Sartori Memorial Hospital 515 College Street Cedar Falls, IA 50613	160040	07/17/2007	IA	ASMBS
Maimonides Medical Center 948 48th Street, 2nd floor Brooklyn, NY 11219	33-0194	07/10/2007	NY	ASMBS
Westchester Medical Center 95 Grasslands Road Valhalla, NY 10595	330234	07/17/2007	NY	ASMBS
Deaconess Hospital 311 Straight Street Cincinnati, OH 45219	36-0038	07/17/2007	OH	ASMBS

Northern Ohio Bariatric Center at Parma Hospital 6305 Powers Boulevard Parma, OH 44129	360041	07/10/2007	OH	ASMBS
Einstein at Elkins Park 60 E. Township Line Road Elkins Park, PA 19027	390142	07/10/2007	PA	ASMBS
Lahey Clinic Medical Center 41 Mall Road Burlington, MA 01805	220171	06/22/2007	MA	ACS
St. Francis Hospital 34515 Ninth Ave South Federal Way, WA 98003	500141	07/26/2007	WA	ACS
California Foundation for Health 1401 Garces Highway Delano, CA 93215	050608	07/10/2007	CA	d.b.a. Delano Regional Medical Center; ASMBS
Northeast Alabama Regional Medical Center 400 East 10th Street Anniston, AL 36207	010078	07/30/2007	AL	ASMBS
Trinity Medical Center 4343 N. Josey Lane Carrollton, TX 75010	45-0730	07/30/2007	TX	ASMBS
Gratiot Medical Center 300 E. Warwick Drive Alma, MI 48801	23-0030	07/30/2007	MI	ASMBS
Cuyuna Regional Medical Center 320 East Main Street Crosby, MN 56441	241353	08/20/2007	MN	ASMBS
Valley Medical Center 400 South 43rd Street Renton, WA 98055	500088	07/30/2007	WA	ASMBS

Renaissance Hospital Dallas 427 W. 20th Street Suite 300 Houston, TX 77008	670002	08/08/2007	TX	ASMBS
UPMC Presbyterian Shadyside 5230 Centre Avenue Pittsburgh, PA 15232	39-0114	08/20/2007	PA	ASMBS
Clarian North Medical Center 6625 Network Way Suite 100 Indianapolis, IN 46202	15-0161	08/20/2007	IN	ASMBS
Genesis Medical Center 1227 East Rusholme Street Davenport, IA 52803	160033	08/08/2007	IA	ASMBS
University General Hospital 7501 Fannin Street Houston, TX 77054	670019	08/08/2007	TX	ASMBS
Ellis Hospital 1101 Nott Street Schenectaday, NY 12308	330153	06/19/2007	NY	ASMBS
University of Texas Medical Branch 301 University Boulevard Galveston, TX 77555-1168	450018	08/16/2007	TX	ACS
UPMC Presbyterian Shadyside 5230 Centre Avenue Pittsburgh, PA 15232	39-0114	08/20/2007	PA	ABMS
Christiana Care Health Services 4755 Ogletown – Stanton Road Newark, DE 19718	080001	08/29/2007	DE	ASMBS
Stanford Hospital and Clinics 300 Pasteur Drive Stanford, CA 94305	050441	09/13/2007	CA	ACS

Summa Health Systems Hospital 95 Arch Street Suite 240 Akron, OH 44304	360020	09/21/2007	OH	ASMBS
Memorial Regional Hospital 3500 Johnson Street Hollywood, FL 33021	100038	09/11/2007	FL	ASMBS
Temple University Hospital 3401 North Broad Street Philadelphia, PA 19140	390027	09/21/2007	PA	ASMBS
Good Samaritan Hospital 2425 Samaritan Drive San Jose, CA 95124	50380	09/21/2007	CA	ASMBS
Johnson City Medical Center 400 North State of Franklin Road Johnson City, TN 37604	HSP440063	09/27/2007	TN	ASMBS
Providence Saint Joseph Medical Center 201 South Buena Vista Street Suite 425 Burbank, CA 91505	50235	N/A	CA	ASMBS – 09/17/2007; ACS – 09/05/2007
Baptist Bariatric Center of Excellence 1000 West Moreno Street Pensacola, FL 32501	10-0093	09/27/2007	FL	ASMBS
Hillcrest Hospital 2104 Woodruff Road Greenville, SC 29607	43-0037	10/10/2007	SC	ASMBS
Fairway Medical 67252 Industry Lane Covington, LA 70433	190267	10/10/2007	LA	ASMBS
John T. Mather Memorial Hospital 75 North Country Road Port Jefferson, NY 11777	JTM 33-0185	10/10/2007	NY	ASMBS

Lenox Hill Hospital 110 East 59th Street, Suite 8A New York, NY 10022	10003F8	10/10/2007	NY	ASMBS
Easton Hospital 250 South 21st Street Easton, PA 18042	390162	10/10/2007	PA	ASMBS
Medical City Dallas Hospital 7777 Forest Lane, Suite 240A Dallas, TX 75230	000340	10/10/2007	TX	ASMBS
St Vincent's East 50 Medical Park East Drive Birmingham, AL 35235	010011	10/10/2007	AL	ASMBS
Northside Hospital 1000 Johnson Ferry Road Atlanta, GA 30342	11-0161	10/10/2007	GA	ASMBS
Missouri Bariatric Services 1000 W. Nifong Boulevard, Building 2, Suite 210 Columbia, MO 65203	000011108	10/10/2007	MO	ASMBS
Presbyterian Hospital of Plano 6200 West Parker Road Plano, TX 75093	45-0771	10/10/2007	TX	ASMBS
Norton Suburban Hospital 315 East Broadway Louisville, KY 40202	180088	10/10/2007	KY	ASMBS
Sky Ridge Medical Center 10101 RidgeGate Parkway Lone Tree, CO 80124	060112	10/30/2007	CO	ASMBS
St. Mary Medical Center 1050 Linden Avenue Long Beach, CA 90813	050191	10/30/2007	CA	ASMBS

Scott and White Hospital 2401 S. 31st Street Temple, TX 76508	450054	10/24/2007	TX	ACS
The Methodist Hospitals, Inc. 303 East 89th Avenue Merrillville, IN 46410	150132	10/30/2007	IN	ASMBS
Parkview Community Hospital 3865 Jackson Street Riverside, CA 92503	050102	10/30/2007	CA	ASMBS
Evergreen Hospital 12040 NE 128th Street Kirkland, WA 98034	500124	10/30/2007	WA	ASMBS
University of Maryland Medical Center 22 South Greene Street Baltimore, MD 21201-1595	21002	11/05/2007	MD	ACS
Montefiore Medical Center 111 East 210th Street Bronx, NY 10467	330059	11/07/2007	NY	Group #: 330059, Dr. Karen Gibbs #: 140341, Dr. Pratibha Vemulapalli #: 3097H1; ACS
Emory Crawford Long Hospital 1364 Clifton Road, NE Atlanta, GA 30322	110078	11/13/2007	GA	ACS
El Camino Hospital 2500 Grant Road Mountain View, CA 94039	050308	11/19/2007	CA	ASMBS
Northeast Baptist Hospital 8811 Village Drive San Antonio, TX 78217	450058	11/19/2007	TX	ASMBS

University of Iowa Hospitals and Clinics 4624 JCP Bariatric Surgery Iowa City, IA 52242	160058	11/19/2007	IA	ASMBS
El Camino Hospital 2500 Grant Road Mountain View, CA 94039	050308	11/19/2007	CA	ASMBS
Aspirus Wausau Hospital 333 Pineridge Boulevard Wausau, WI 54401	52-0030	11/28/2007	WI	ASMBS
Eastern Idaho Regional Medical Center 2860 Channing Way Suite 102 Idaho Falls, ID 83404	13-0018	12/10/2007	ID	ASMBS
Mount Sinai Medical Center 4701 North Meridian Avenue Miami Beach, FL 33140	10-0034	12/11/2007	FL	ASMBS
North Florida Regional Medical Center 6400 Newberry Road Suite 106 Gainesville, FL 32605	21536	12/27/2007	FL	ASMBS
Baylor Regional Medical Center at Plano 470 Alliance Boulevard Plano, TX 75093	45-0890	01/04/2008	TX	ASMBS
Memorial Medical Center 1800 Coffee Road Suite 30 Modesto, CA 95350	050557	01/04/2008	CA	ASMBS
Pennsylvania Hospital 800 Spruce Street 2 Cathcart Philadelphia, PA 19107	39-0226	01/08/2008	PA	ASMBS

Houston Northwest Medical Center 710 FM 1960 Road West Houston, TX 77090	450638	01/08/2008	TX	ASMBS
St. Bernadine Medical Center 2101 North Waterman Avenue San Bernadino, CA 92404	05-0129	01/04/2008	CA	ASMBS
UCLA Medical Center 10833 Le Conte Avenue CHS 72-236 Los Angeles, CA 90095	050262	01/08/2008	CA	ASMBS
Lourdes Medical Center Burlington County 218-A Sunset Road Willingboro, NJ 08046	310061	01/30/2008	NJ	ASMBS
Sacred Heart Medical Center 1200 Hilyard Street Suite S-570 Eugene, OR 97401	380033	01/23/2008	OR	ASMBS
Salt Lake Regional Medical Center 1050 East South Temple Salt Lake City, UT 84102	460003	02/11/2008	UT	ASMBS
Kaiser Permanente-South San Francisco 1200 El Camino Real South San Francisco, CA 94080	050070	01/30/2008	CA	ASMBS
Chilton Memorial Hospital 97 West Parkway Pompton Plains, NJ 07444	310017	02/12/2008	NJ	ASMBS
Mary Imogene Bassett Hospital One Atwell Road Cooperstown, NY 13326	330136	02/12/2008	NY	ASMBS
Sharp Memorial Hospital 7901 Frost Street – 5 South /ACC San Diego, CA 92123	0150100	02/11/2008	CA	ASMBS

Doctors Hospital at White Rock Lake 9440 Poppy Drive Dallas, TX 75218	450678	01/30/2008	TX	ASMBS
Rhode Island Hospital 2 Dudley Street Suite 470 Providence, RI 02905	410007	02/25/2008	RI	ASMBS
Munson Medical Center 1105 Sixth Street Traverse City, MI 49684	23-0097	02/19/2008	MI	ASMBS
DayOne Health at 900 N. Michigan Surgical Center 409 West Huron Suite 300 Chicago, IL 60613	538810	02/19/2008	IL	ASMBS
USC University Hospital 1500 San Pablo Los Angeles, CA 90033	05-0696	01/30/2008	CA	ASMBS
Lexington Medical Center 2720 Sunset Boulevard West Columbia, SC 29169-4810	See other information	01/14/2008	SC	ACS; NPI: Hospital Services 1356366314; Professional Services 1144248097
Saint Clare's Hospital 400 West Blackwell Street Dover, NJ 07801	310050	03/17/2008	NJ	ASMBS
Hartford Hospital 85 Seymour Street, Suite 415 Hartford, CT 06106	07-0025	03/25/2008	CT	ASMBS
Singing River Hospital 2809 Denny Avenue Pascagoula, MS 39581	250040	03/17/2008	MS	ASMBS

St. John's Regional Health Center 1235 East Cherokee Street Springfield, MO 65804	260065	03/17/2008	MO	ASMBS
Willis Knighton Health System 2551 Greenwood Road Suite 340 Shreveport, LA 71103	190111	03/17/2008	LA	ASMBS
Cottage Health System PO Box 689 Pueblo at Bath Street Santa Barbara, CA 93102-0689	030596	02/25/2008	CA	ASMBS
Syosset Hospital 221 Jericho Turnpike Syosset, NY 11791	330106	02/19/2008	NY	ASMBS
The Hospital of Central Connecticut 1000 Grand Street New Britain, CT 06050	070035	03/11/2008	CT	ASMBS
Stringfellow Memorial Hospital 105 Windsor Lane Rainbow City, AL 35906	01-0038	03/11/2008	AL	ASMBS
Providence Alaska Medical Center 3200 Providence Drive Anchorage, AK 99519-6604	02-0001	03/17/2008	AK	ASMBS
The Reading Hospital and Medical Center 2603 Keiser Boulevard Wyomissing, PA 19610	390044	03/25/2008	PA	ASMBS
Good Samaritan Hospital 255 Lafayette Avenue Suffern, NY 10901	330158	03/25/2008	NY	ASMBS
San Joaquin Community Hospital 2819 H Street Bakersfield, CA 93301	04055	04/01/2008	CA	ASMBS

Lowell General Hospital 295 Varnum Avenue Lowell, MA 01854		02/22/2008	MA	Medicare: 220063; Medicaid Inpatientt #: 100228; Medicaid Outpatient #: 1201069; ACS
Memorial Health University Medical Center 4700 Waters Avenue Savannah, GA 31404	11-0036	04/08/2008	GA	ASMBS
Christiana Care Health Services 3506 Kennett Pike Wilmington, DE 19807	080001	04/18/2008	DE	ACS
Abington Memorial Hospital 1235 Old York Road, Suite G-28 Abington, PA 19001	390231	04/21/2008	PA	ASMBS
Gateway Medical Center 1771 Madison Street Clarksville, TN 37043	440035	04/21/2008	TN	ASMBS
Westchester Medical Center 95 Grasslands Road Valhalla, NY 10595	W94181	04/07/2008	NY	ACS
High Point Regional Health System 601 N. Elm Street High Point, NC 27261	34-0004	05/02/2008	NC	ACS
Desert Regional Medical Center 1150 North Indian Canyon Drive Palm Springs, CA 92262	05-0243	05/12/2008	CA	ASMBS
Southwest General Hospital 7400 Barlite Boulevard San Antonio, TX 78224	450697-A	05/22/2008	TX	ASMBS

Muhlenberg Regional Medical Center Park Avenue and Randolph Road Plainfield, NJ 07061	310063	06/02/2008	NJ	ASMBS
St. Mary's Medical Center 407 East 3rd Street Duluth, MN 55805	240002	06/09/2008	MN	ASMBS
St. Charles Medical Center - Bend 2500 NE Neff Road Bend, OR 97701	380047	06/30/2008	OR	ASMBS
Bay Area Hospital 1775 Thompson Road Coos Bay, OR 97420	380090	06/30/2008	OR	ASMBS
Saint Elizabeth Regional Medical Center 555 South 70th Street Lincoln, NE 68510	280020	07/21/2008	NE	ASMBS 6th Floor Surgical Unit
Holston Valley Medical Center 130 Ravine Street Kingsport, TN 37660	44-0017	07/29/2008	TN	ASMBS
Holy Cross Hospital 1500 Forest Glen Road Silver Spring, MD 20910	210004	07/29/2008	MD	ACS
North Carolina Baptist Hospital Medical Center Boulevard Winston Salem, NC 27157	340047	07/29/2008	NC	ASMBS
Flagler Hospital 400 Health Park Boulevard St. Augustine, FL 32086	100090	07/31/2008	FL	ASMBS
Torrance Memorial Medical Center 3330 Lomita Boulevard Torrance, CA 90505	05-0351	08/02/2008	CA	ASMBS

St. John Macomb-Oakland Hospital 27483 Dequindre Road Madison Heights, MI 48701	230195	08/07/2008	MI	ASMBS Suite 204
Nebraska Methodist Hospital 10060 Regency Circle Omaha, NE 68114	280040	08/07/2008	NE	ASMBS
Marquette General Hospital 580 West College Avenue Marquette, MI 49855	23-0054	08/07/2008	MI	ASMBS
Sacred Heart Hospital 5149 North 9th Avenue Suite G-32 Pensacola, FL 32504	100025	08/19/2008	FL	ASMBS
Central Mississippi Medical Center 1850 Chadwick Drive Jackson, MS 39204	250072	08/26/2008	MS	ASMBS
Vista Hospital of Dallas 2696 West Walnut Street Garland, TX 75042	450315	08/26/2008	TX	ASMBS
St. Alexius Medical Center 1555 Barrington Road Hoffman Estates, IL 60169	14-0290	08/26/2008	IL	ASMBS
Alexian Brothers Medical Center 800 Biesterfield Road Elk Grove Village, Illinois 60007	14-0290	08/26/2008	IL	ASMBS 6th Floor

Alegent Health Immanuel Medical Center 6828 North 72nd Street Suite 5500 Omaha, NE 68122	280081	08/29/2008	NE	ASMBS
MountainView Hospital 3100 North Tenya Way Las Vegas, NV 89128	290039	09/03/2008	NV	ASMBS
Southwest Washington Medical Center 400 NE Mother Joseph Place Vancouver, WA 98664	500050	09/08/2008	WA	ASMBS
JFK Medical Center 5301 South Congress Avenue Atlantis, FL 33462	100080	09/18/2008	FL	ASMBS
McLaren Regional Medical Center 401 South Ballenger Highway Flint, MI 48532	230141	09/24/2008	MI	ASMBS
Cheyenne Regional Medical Center 2301 House Avenue, Suite 500 Cheyenne, WY 82001	530014	09/24/2008	WY	ASMBS
St. Mary Mercy Hospital 14555 Levan Road, Suite 311 Livonia, MI 48154	12200126	09/25/2008	MI	ASMBS
Altru Health System 1000 South Columbia Road Grand Forks, ND 58206	350019	09/25/2008	ND	ASMBS
Lutheran Hospital of Indiana Bariatric Center 7836 West Jefferson, Suite 101 Ft. Wayne, IN 46804	150017	09/25/2008	IN	ASMBS
Seton Medical Center 1201 West 38th Street Austin, TX 78705	450056	09/25/2008	TX	ASMBS

St. Elizabeth and St. Joseph Surgical 452 Broadway Street Youngstown, OH 44504	36-0161	09/25/2008	OH	ASMBS
Henry Ford Macomb Hospital – Warren Campus 13355 East 10 Mile Road Warren, MI 48089	230204	10/07/2008	MI	ASMBS
Saint Alphonsus Regional Medical Center 1055 North Curtis Road Boise, ID 83706	130007	10/07/2008	ID	ASMBS
Riverside Methodist Hospital 3535 Olentangy River Road Columbus, OH 43214	36-0006	10/21/2008	OH	ASMBS
Lawrence Hospital Center 55 Palmer Avenue Bronxville, NY 10708	330061	11/05/2008	NY	ACS
Winthrop University Hospital 120 Mineola Boulevard Suite 320 Mineola, NY 11501	330167	11/10/2008	NY	ASMBS
St. John's Regional Medical Center 1700 North Rose Avenue #380 Oxnard, CA 93030	050082	12/02/2008	CA	ASMBS
Floyd Medical Center PO Box 233 Rome, GA 30162	110054	01/07/2009	GA	ASMBS
Hazleton General Hospital 700 East Broad Street Hazleton, PA 18201	390185	04/20/2009	PA	ASMBS
Memorial Hermann Texas Medical Center 6411 Fannin Street Houston, TX 77030	45-0068	01/29/2009	TX	ACS

Mercy Medical Center 1111 6th Avenue Des Moines, IA 50314-9906	160083	01/28/2009	IA	ASMBS
Northwest Medical Center 1980 W. Hospital Drive Suite 200 Tucson, AZ 85741	03-0085	04/06/2009	AZ	ASMBS
Plaza Medical Center of Fort Worth 900 8th Avenue PAT-Bariatrics Ft. Worth, TX 76104	450672	03/20/2009	TX	ASMBS
SUNY Upstate Medical University 750 E. Adams Street, University Hospital Syracuse, NY 13210	NPI #: 1578554630	03/27/2009	NY	ACS; General Acute Care Hospital Number: 330241
Winchester Medical Center Bariatric Program 1840 Amherst Street Winchester, VA 22601	490005	03/20/2009	VA	ASMBS
Vanderbilt University Medical Center 1215 21st Avenue South Nashville, TN 37232	1952356065	05/05/2009	TN	ACS
Mother Frances Regional Medical Center 910 East Houston Street Suite 550 Tyler, TX 75702	450102	05/07/2009	TX	ASMBS
Sparrow Health System 2900 Hannah Boulevard Suite B-107 East Lansing, MI 48823	230230	05/15/2009	MI	ASMBS
First Street Hospital 4801 Bissonnet Street Bellaire, TX 77401	67009	05/18/2009	TX	ASMBS

Good Samaritan Hospital Medical Center 1000 Montauk Highway West Islip, NY 11795	330286	05/18/2009	NY	ASMBS
St. Joseph Hospital 1100 West Stewart Drive Orange, CA 92868	050069	05/18/2009	CA	ASMBS
Borgess Medical Center 1521 Gull Road Kalamazoo, MI 49048	23-0117	05/28/2009	MI	ASMBS
UT Southwestern Medical Center 5909 Harry Hines Boulevard Dallas, TX 75235	45-0044	05/28/2009	TX	ACS
Brookdale University Hospital/ Medical Center 1 Brookdale Plaza New York, NY 11212	33-0233	06/05/2009	NY	ASMBS
Des Peres Hospital 2345 Dougherty Ferry Road St. Louis, MO 63122	75-269-5810	06/05/2009	MO	ASMBS
Surgical Weight Loss Program at Eastern Maine Medical Center 905 Union Street Suite 11 Bangor, ME 4401	1790789147	06/10/2009	ME	ACS
Baylor Medical Center at Frisco 5601 Warren Parkway Frisco, TX 75034	450853	06/22/2009	TX	ASMBS
Trinity Hospital of Augusta 1500 Johns Road Suite 3 Augusta, GA 30904	110039	06/29/2009	GA	ASMBS

The Nebraska Medical Center 988142 Nebraska Medical Center Omaha, NE 68198-8142	28-0013	06/29/2009	NE	ASMBS
Day Surgery at Renaissance DBA Doctors Hospital at Renaissance 5501 S. McColl Road Edinburg, TX 78539	450869	07/13/2009	TX	ASMBS
Gunderson Lutheran Medical 1900 South Avenue LaCrosse, WI 54601	1851343115	04/28/2009	WI	ACS
Princeton Baptist Medical Center 917 Tuscaloosa Avenue, SW Birmingham, AL 35211	1144312430	07/01/2009	AL	
Centegra Health System Memorial Medical Center 3701 Doty Road Woodstock, IL 60098	140176	08/14/2009	IL	ASMBS
Wesley Long Community Hospital 501 North Elam Avenue Greensboro, NC 27403-1199	1477591055	06/29/2009	NC	ACS
South Miami Hospital 3 East Tower Building, 6200 SW 73rd Street South Miami, FL 33143	100154	06/22/2009	FL	ASMBS
Castle Medical Center 640 Ulukahiki Street Kailua, HI 96734	120006	09/08/2009	HI	ASMBS
Advocate Good Samaritan Hospital 3815 Highland Avenue Downers Grove, IL 60515	140288	09/08/2009	IL	ASMBS

Sacred Heart Medical Center 3377 RiverBend Drive Springfield, OR 97477	380033	01/23/2008	OR	ASMBS
Holzer Weight Loss Solutions 100 Jackson Pike Gallipolis, OH 45631	3600542	09/30/2009	OH	ASMBS
Christus Schumpert Health System One St. Mary Place Shreveport, Louisiana 71101	190041	12/02/2005	LA	ASMBS
Day Surgery at Renaissance DBA Doctors Hospital at Renaissance 5501 S. McColl Road Edinburg, TX 78539	450869	07/13/2009	TX	ASMBS
Gunderson Lutheran Medical 1900 South Avenue LaCrosse, WI 54601	1851343115	04/28/2009	WI	ACS

Addendum XVI—FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials

In a National Coverage Determination for fluorodeoxyglucose positron emission tomography (FDG-PET) for Dementia and Neurodegenerative Diseases (220.6.13) we indicated that an FDG-PET scan is considered reasonable and necessary in patients with mild cognitive impairment or early dementia only in the context of an approved clinical trial that contains patient safeguards and protections to ensure proper administration, use, and evaluation of the FDG-PET scan.

Facility name	Provider Number	Date approved	State	Name of Trial	Principal Investigator
UCLA Medical Center 10833 Le Conte Avenue Los Angeles, CA 90095	HW13029	06/07/2006	CA	Early and Long-Term Value of Imaging Brain Metabolism	Dr. Daniel Silverman
Santa Monica-UCLA Medical Center 1245 16th Street Suite 105 Santa Monica, CA 90404	W11817A	01/12/2007	CA	N/A	N/A
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Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[FDMS Docket No. FSIS–2005–0018]

RIN: 0583–AC60

Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Supplemental Proposed Rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is issuing this supplemental proposed rule that, if finalized, will amend the Federal meat and poultry products inspection regulations to require nutrition labeling of the major cuts of single-ingredient, raw meat and poultry products, unless an exemption applies.

DATES: Submit comments on or before February 16, 2010.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5474, Beltsville, MD 20705–5474.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2005–0018. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. All comments submitted in response to this proposal, as well as background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Sally Jones, Senior Technical Advisor, Labeling and Program Delivery Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Beltsville, MD 20705; (301) 504–0878.

Section I

SUPPLEMENTARY INFORMATION:

Background

Supplemental Proposed Rule: On January 18, 2001, FSIS published a proposed rule in the **Federal Register** entitled, ''Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products'' (66 FR 4969). Because of the length of time since the publication of the proposed rule, FSIS is providing the public an opportunity to comment on this supplemental proposed rule. FSIS also welcomes comments on relevant issues for which there is new evidence since the proposed rule was issued.

This supplemental proposed rule responds to all comments received on the January 18, 2001 proposed rule and explains how the Agency intends to proceed with a final rule. Although FSIS has come to tentative conclusions regarding the issues raised by the commenters, in this supplemental proposed rule, FSIS is requesting additional comments on policies for which there were significant differences of opinion among commenters.

Specifically, under the ''Provisions of the Supplemental Proposed Rule'' heading below, FSIS is requesting comments on whether nutrition information should be allowed on point-of-purchase materials for ground or chopped products, as an alternative to requiring nutrition information on the product labels. FSIS is also requesting comments on the use of statements of lean percentages on the label or in labeling of ground or chopped products that do not meet the regulatory criteria for ''low fat.'' In addition, under the ''Provisions of the Supplemental Proposed Rule'' heading below, FSIS is requesting comments on whether it should provide an exemption from nutrition labeling requirements for small businesses that include a fat percentage statement and lean percentage statement on the labeling or in labeling of ground or chopped product. FSIS is requesting copies of any studies, surveys, or other data on consumers' perception of and use of point-of-purchase materials versus nutrition labels for ground or chopped product and on consumers' understanding of the nutrient content of ground or chopped products. FSIS is also requesting copies of any studies, surveys, or data on consumers' use and understanding of fat percentage and lean percentage statements on ground or chopped products. FSIS will post on its Web site, with this supplemental proposed rule, all studies and data submitted to the Agency in response to this request. FSIS requests comment on the potential effects of disallowing a statement of lean percentage on ground or chopped products.

FSIS will consider all comments received in response to this supplemental proposed rule. After evaluating the comments, FSIS intends to respond to them, make any appropriate and necessary changes to this rule, and issue the final rule in the **Federal Register**.

The Proposed Rule

Major cuts: FSIS proposed to require nutrition labeling of the major cuts of single-ingredient, raw meat and poultry products identified in §§ 317.344 and 381.444 that are not ground or chopped, except for certain exemptions. FSIS proposed that ''ground beef regular without added seasonings,'' ''ground beef about 17% fat,'' and ''ground pork'' would no longer be included in the list of major cuts in § 317.344.

FSIS proposed to make the guidelines in place for the voluntary nutrition labeling program mandatory for the major cuts of single-ingredient, raw products that are not ground or chopped. Thus, for these products, FSIS proposed that nutrition information be provided on the label or at point-of-purchase, unless an exemption would apply. For further explanation of the guidelines for voluntary nutrition labeling, *see* 66 FR 4971, January 18, 2001. For further explanation of the proposal to make these guidelines mandatory for the major cuts of single-ingredient, raw products that are not ground or chopped, *see* 66 FR 4973–4975, January 18, 2001.

In the preamble to the proposed rule, FSIS explained that, in its two most recent surveys of the voluntary nutrition labeling of single-ingredient, raw products, FSIS found that significant participation in the voluntary nutrition labeling program did not exist (66 FR 4972, January 18, 2001). FSIS regulations provide that a food retailer is participating at a significant level (1) if the retailer provides nutrition labeling information for at least 90 percent of the major cuts of single-ingredient, raw meat and poultry products it sells; and

(2) if the nutrition label on these products is consistent in content and format with the mandatory program, or if nutrition information is displayed at point-of-purchase in an appropriate manner. The required nutrition labeling provisions for multi-ingredient and heat processed products are referred to as ''the mandatory program.'' The regulations also provide that significant participation by food retailers exists if at least 60 percent of all companies that are evaluated are participating in accordance with the guidelines (§ 317.343 and § 381.443). The term ''companies,'' as used in these regulations, refers to individual stores. FSIS used a representative sample of stores to assess participation (*see* 58 FR 640, January 6, 1993). Based on the survey data from the two most recent surveys, less than 60 percent of stores evaluated were participating in accordance with the guidelines.

In the preamble to the proposed rule, FSIS explained that, because the most recent surveys showed that significant participation in the voluntary nutrition labeling program did not exist, FSIS believed that the proposed rule was necessary. FSIS stated that, without nutrition information, consumers are not able to assess the nutrient content of the major cuts and thus cannot make educated choices about these products based on nutrition information. FSIS believed that the lack of nutrition information on the labeling of the major cuts was misleading (66 FR 4973–4974, January 18, 2001) because it fails to disclose material facts about the consequences of consumption of these products. Consumers can compare the fat content in major cuts of poultry based on whether the product has skin and based on the levels of attached fat in the product. Similarly, consumers can compare the fat content among major cuts of meat products based on internal marbling and attached fat. However, without nutrition labeling for the major cuts, consumers cannot assess precise levels of fat (*e.g.,* 10 grams vs. 20 grams of fat per serving) and cannot know the levels of specific nutrients, such as saturated fat, in these products. Therefore, without nutrition labeling of these products, consumers cannot make educated choices about consuming the major cuts.

The FMIA and PPIA provide that product is misbranded if its labeling is false or misleading in any particular (21 U.S.C. 601(n)(1) and 453(h)(1)). Without nutrition information for the major cuts of single-ingredient, raw products, FSIS tentatively concluded that these products would be misbranded under section 1(n) of the FMIA or section 4(h) of the PPIA because the label would fail to reveal significant material facts about the consequences of consuming these products(66 FR 4974, January 18, 2001).

As explained in the preamble to the proposed rule, although FSIS believed that nutrition information on the labels of individual packages of single-ingredient, raw products is useful, the Agency proposed that nutrition information for the major cuts could also be provided on point-of-purchase materials, because consumers have reasonable expectations as to the nutrient content of these products. Also, FSIS stated that the nutrient content of a given major cut is relatively uniform across the market, and these products are not formulated in the manner of ground or chopped products (66 FR 4974, January 18, 2001).

Ground or Chopped Products: Ground or chopped products that are multi-ingredient or heat processed products are subject to the requirements of the mandatory nutrition labeling program; therefore, these products are already required to bear nutrition labels, unless they qualify for an exemption. FSIS proposed to extend mandatory nutrition labeling requirements to all ground or chopped products, including single-ingredient, raw ground or chopped products, unless an exemption applies. Thus, FSIS proposed to require that nutrition labels be provided for all ground or chopped products (livestock species) and hamburger, with or without added seasonings, unless an exemption applies. Similarly, FSIS proposed to require that nutrition labels be provided for all ground or chopped poultry (kind), with or without added seasonings, unless an exemption applies. Under the proposed rule, products that would be required to bear nutrition labels include single-ingredient, raw hamburger, ground beef, ground beef patties, ground chicken, ground turkey, ground chicken patties, ground pork, and ground lamb.

In the proposed rule, FSIS explained that, unlike other single-ingredient, raw products, producers are able to formulate precisely the fat content of ground or chopped products. Therefore, in this respect, these products are similar to products in the existing mandatory program that are required to bear nutrition labels (66 FR 4975, January 18, 2001). FSIS noted that other single-ingredient, raw products cannot be formulated in the same manner or to the same degree as ground beef products (66 FR 4976, January 18, 2001).

FSIS noted that it believed that consumers could not easily see the fat in ground or chopped beef. In ground or chopped beef products, the fat is uniformly distributed throughout the product, and is not clearly distinguishable on the surface of the product (66 FR 4975, January 18, 2001). FSIS also explained that the Agency believed that consumers cannot estimate the level of fat in ground or chopped beef and cannot compare the levels of fat in these products to those in other products (66 FR 4975, January 18, 2001). Similarly, FSIS explained that ground lamb and ground pork may contain varying amounts of fat and varying nutrient content, which consumers cannot visually detect (66 FR 4976, January 18, 2001). Additionally, FSIS noted that producers sometimes use meat from advanced meat recovery (AMR) systems and low temperature rendering in ground or chopped beef or pork products, which can affect their nutrient content (66 FR 4975 and 4976, January 18, 2001). Finally, FSIS noted that, as with the fat on ground meat products, consumers cannot readily detect the fat content of ground poultry products (66 FR 4976, January 18, 2001). For these reasons, FSIS tentatively concluded that ground or chopped meat and poultry products that did not bear nutrition information would be misbranded under section 1(n)(1) of the FMIA and section 4(h)(1) of the PPIA (66 FR 4977, January 18, 2001).

FSIS proposed to require that nutrition information for ground or chopped products appear on the label of these products (unless an exemption applies), as is required for multi-ingredient and heat processed products, rather than on point-of-purchase materials because ground or chopped products are similar to multi-ingredient and heat processed products in that certain parameters, such as their fat content, can be controlled precisely to obtain the desired product. In addition, because there are numerous formulations of ground or chopped products, it would be difficult for producers or retailers to develop point-of-purchase materials that would address all the different formulations that exist for these products. Furthermore, it would be difficult for consumers to find the correct information for a specific ground or chopped product on point-of-purchase materials that include information concerning numerous formulations of these products (66 FR 4977, January 18, 2001).

Exemptions: FSIS proposed that certain exemptions from nutrition labeling requirements would apply to the major cuts of single-ingredient, raw meat and poultry products and ground or chopped meat and poultry products. FSIS proposed the following

exemptions from nutrition labeling requirements for ground or chopped products: ground or chopped products that qualify for the small business exemption in §§ 317.400(a)(1) and 381.500(a)(1); ground or chopped products in packages that have a total surface area available to bear labeling of less than 12 square inches, provided that the product's labeling includes no nutrition claims or nutrition information and provided that an address or telephone number that a consumer can use to obtain the required information is included on the label; ground or chopped products that are intended for further processing; ground or chopped products that are not for sale to consumers; ground or chopped products that are in small packages that are individually wrapped packages of less than ½ ounce net weight; ground or chopped products that are custom slaughtered or prepared; and ground or chopped products that are intended for export.

FSIS proposed the following exemptions for major cuts of single-ingredient, raw products that are not ground or chopped: major cuts intended for further processing; major cuts not for sale to consumers; major cuts in small packages that are individually wrapped packages of less than ½ ounce net weight; major cuts that are custom slaughtered or prepared; and major cuts that are intended for export.

FSIS proposed to exempt ground or chopped products that qualified for the small business exemption from nutrition labeling requirements for the main reason stated in the January 6, 1993, final rule: because these requirements would create undue economic hardship for small businesses (58 FR 638). FSIS stated in the proposed rule that it did not believe that the reasons that necessitated the establishment of the small business exemption, as explained in the January 6, 1993 final rule, are applicable to the major cuts of single-ingredient, raw meat and poultry products produced by small businesses. For these products, FSIS proposed that nutrition information may be provided on labels or, alternatively, at their point-of-purchase. In addition, FSIS explained that it intended to make point-of-purchase materials available over the Internet free of charge. Therefore, the nutrition labeling requirement for major cuts of single-ingredient, raw products should not impose an economic hardship for ''small businesses'', including those that are retail stores (66 FR 4978, January 18, 2001).

In the preamble to the January 6, 1993, final rule, FSIS explained that it was proposing an exemption from nutrition labeling requirements for products intended for further processing and products not for sale to consumers because consumers do not see the nutrition information on products used for further processing or products that are not for sale to consumers. The Agency also explained that it would exempt individually wrapped packages of less than ½ ounce net weight, provided no nutrition claim or nutrition information was made on the label, because these products are an insignificant part of the diet. With regard to the custom exemption, the Agency explained that an exemption should apply because these custom services are performed solely for individuals. Finally, the Agency explained that products intended for export should be exempt because these products are labeled according to the requirements of the country where the product is to be exported (58 FR 639, January 6, 1993). In the January 18, 2001, proposed rule, the Agency proposed these exemptions because the Agency had tentatively determined that the bases for these exemptions, as explained in the January 6, 1993, final rule, are valid as applied to nutrition labeling for ground or chopped products and for major cuts of single-ingredient, raw products. Therefore, FSIS proposed that any ground or chopped product or major cut of single-ingredient, raw product that qualifies for any of these exemptions will continue to be exempt (66 FR 4979, January 18, 2001).

Under current regulations, products in packages that have a total surface area available to bear labeling of less than 12 square inches are exempt from nutrition labeling, provided the product's labeling includes no nutrition claims or nutrition information and provided that an address or telephone number that a consumer can use to obtain the required information is included on the label. FSIS allowed for nutrition information to be provided by alternative means for products of this size in order to incorporate sufficient flexibility in the regulations (58 FR 47625, January 6, 1993). As explained in the proposed rule, for ground or chopped products, FSIS believes it is necessary to provide this flexibility for products in packages that have a total surface area available to bear labeling of less than 12 square inches, provided that the labels for these products bear no nutrition claims or nutrition information. However, because nutrition information for the major cuts of single-ingredient, raw meat and poultry products may be provided on point-of-purchase materials, FSIS proposed that the provisions for providing nutrition labeling by alternate means for products in packages that have a total surface area available to bear labeling of less than 12 square inches would not apply to the major cuts of single-ingredient, raw meat and poultry products (66 FR 4979, January 18, 2001).

In the preamble to the proposed rule, FSIS explained that restaurant menus that include ground or chopped products generally do not constitute nutrition labeling or fall within the scope of the proposed regulations. Similarly, although a restaurant menu would most likely not include a major cut of single-ingredient, raw product, if it did, the menu would not fall within the scope of the proposed regulations. Finally, the preamble explained that, under the proposed rule, any ground or chopped product or major cut of single-ingredient, raw product represented or purported to be specifically for infants and children less than 4 years of age would not be allowed to include certain nutrient content declarations, because infants and children less than 4 years of age have different nutrition needs than adults and children older than 4 years of age (66 FR 4979, January 18, 2001).

In the 1993 final rule on nutrition labeling, FSIS exempted from mandatory nutrition labeling requirements multi-ingredient products processed at retail, and ready-to-eat products packaged or portioned at retail. The reasons that FSIS provided these exemptions in the 1993 final rule were that FSIS believed that it would be impractical to enforce nutrition labeling requirements on these products prepared or served at retail and because the Agency concluded, based on a review of National Food Consumption Survey (NFCS) data, that the average person's diet consisted of an insignificant proportion of ready-to-eat retail packaged products or retail processed products (58 FR 639, January 6, 1993).

The proposed rule did not provide an exemption for ready-to-eat ground or chopped products packaged or portioned at retail, or multi-ingredient ground or chopped products that are processed at retail because, as FSIS explained in the 2001 nutrition labeling proposed rule, there may be a significant amount of multi-ingredient ground beef retail processed products or ready-to-eat retail packaged products. Also, FSIS explained that the Agency no longer believes enforcement of nutrition labeling requirements at retail stores to be impractical because FSIS is already conducting testing for *Escherichia coli*

(*E. coli*) O157:H7 at retail (66 FR 4979, January 18, 2001).

For further explanation of the reasons for the proposed exemptions, *see* 66 FR 4978–4980, January 18, 2001.

Nonmajor Cuts of Single-Ingredient, Raw Meat and Poultry Products That Are Not Ground or Chopped: FSIS did not propose to require nutrition information for single-ingredient, raw meat and poultry products that are not major cuts and that are not ground or chopped. However, FSIS proposed that if nutrition information is provided for these products, it must be provided according to the existing guidelines for the current voluntary nutrition labeling program. Therefore, under the proposed rule, if nutrition information were provided for these products, it would be consistent with the nutrition information required for the major cuts of single-ingredient, raw products. In the preamble to the proposed rule, FSIS explained that the Agency could not determine whether it would be beneficial to require nutrition labeling for nonmajor cuts that are not ground or chopped until it assessed whether adequate nutrition information is being provided for these products (66 FR 4974, January 18, 2001).

Enforcement and Compliance: FSIS conducts sampling and nutrient analysis of products that fall under the mandatory nutrition labeling program. FSIS proposed that the procedures set forth for FSIS product sampling and nutrient analysis in §§ 317.309(h)(1) through (h)(8) and 381.409(h)(1) through (h)(8) would be applicable to ground or chopped meat and to ground or chopped poultry products, respectively. FSIS explained that under the proposal, FSIS would sample and conduct nutrient analysis of ground or chopped products to verify compliance with nutrition labeling requirements, even if nutrition labeling on these products is based on the most current representative data base values contained in USDA's National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference and there are no claims on the labeling. Therefore, FSIS would treat these products as it treats other products required to bear nutrition labels (66 FR 4980, January 18, 2001).

FSIS explained that it would treat ground or chopped products in this way because the fat content of these products can vary significantly. In addition, the preamble to the proposed rule stated that FSIS employees cannot visually assess whether nutrition information on the label of ground or chopped products accurately reflects the labeled products' contents because, in most cases, it is not possible to visually assess the level of fat in a ground or chopped product (66 FR 4980, January 18, 2001).

FSIS also proposed that if nutrition labeling of the major cuts of single-ingredient, raw products (other than ground beef or ground pork) is based on USDA's National Nutrient Data Bank or the USDA's National Nutrient Database for Standard Reference, and there are no nutrition claims on the labeling, FSIS would not sample and conduct a nutrient analysis of the products. The preamble explained that, for the major cuts, FSIS personnel can visually identify the particular cut. FSIS further explained that, if the nutrition information for these products is based on USDA's National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference, and there are no nutrition claims on the labeling, it is not necessary for FSIS to verify the accuracy of the data because they are USDA data. USDA has already evaluated these USDA data and determined that they are valid (66 FR 4980, January 18, 2001).

Permitting Percent Lean Statements on labels or in labeling of ground or chopped products: FSIS also proposed to permit a statement of lean percentage on the label or in labeling of ground or chopped meat and poultry products that do not meet the regulatory criteria for ''low fat,'' provided that a statement of the fat percentage is also displayed on the label or in labeling. FSIS proposed that the required statement of fat percentage be contiguous to, in lettering of the same color, size, and type as, and on the same color background as, the statement of lean percentage. FSIS stated that many consumers have become accustomed to this labeling on ground beef products, and that FSIS believed this labeling provided a quick, simple, and accurate means of comparing all ground or chopped meat and poultry products (66 FR 4981, January 18, 2001).

Provisions of the Supplemental Proposed Rule

Major cuts and nonmajor cuts that are not ground or chopped: Consistent with the proposal, should this rule become final, FSIS will require nutrition information for the major cuts, either on their label or at their point-of-purchase. The provisions of the voluntary nutrition labeling program will be mandatory for the major cuts. As FSIS proposed, ''ground beef regular without added seasonings,'' ''ground beef about 17% fat,'' and ''ground pork'' will no longer be included in the list of major cuts in § 317.344 because FSIS has decided to treat ground meat and poultry products differently than single cuts of meat for the purposes of this regulation. Should this rule become final, ground meat and poultry products will be required to bear nutrition labeling on their packages, unless an exemption applies. Nutrition information at the point-of-purchase for ground or chopped products will not meet the requirements of these regulations.

FSIS believes that without nutrition information, consumers are not able to assess the nutrient content of the major cuts and, thus, cannot make educated decisions about these products based on nutrition information. FSIS has concluded that the lack of nutrition information for the major cuts of single-ingredient, raw products, either on their label or at their point-of-purchase, makes these products misbranded under 21 U.S.C. 601(n)(1) and 453(h)(1). Although FSIS believes that nutrition information on the labels of individual packages of the major cuts of single-ingredient, raw products is useful, this final rule provides that nutrition information for these products may be provided at their point-of-purchase.

In the 1991 proposed rule and the 1993 final rule on nutrition labeling, FSIS stated that if it determined, during any evaluation of its voluntary guidelines, that significant participation did not exist, it would initiate proposed rulemaking to determine whether it would be beneficial to require nutrition labeling on single-ingredient, raw meat and poultry products (56 FR 60306, November 27, 1991; 58 FR 640, January 5, 1993). Therefore, FSIS initiated rulemaking to propose requiring nutrition labeling for the major cuts of single-ingredient, raw products. Through this rulemaking, FSIS has determined that because nutrition information has not been universally available for the major cuts of single-ingredient products, consumers have not been able to assess the nutrient content of these products and, thus, cannot make educated choices about them, and about the significant portion of their diet that these products represent, based on nutrition information. Without nutrition information, the labeling of major cuts of single-ingredient, raw meat and poultry products fails to include material facts about the consequences of consuming these products. FSIS has concluded that the lack of nutrition information for the major cuts of single-ingredient, raw products, either on their label or at their point-of-purchase, makes these products misbranded under 21 U.S.C. 601(n)(1) and 453(h)(1). FSIS has determined that this rule is necessary to ensure that consumers obtain nutrition information concerning

these products. Through the supplemental proposed regulatory impact analysis (PRIA), FSIS has determined that this rule would result in benefits to consumers and net benefits to society.

Consistent with the proposed rule, this supplemental proposed rule will not require nutrition information for nonmajor cuts of single-ingredient, raw meat and poultry products that are not ground or chopped.

FSIS has determined that it is not appropriate or necessary to require nutrition information for nonmajor cuts that are not ground or chopped at this time. They do not contribute in a major way to the diet. Thus, at this time, the consequences of consuming these products cannot be considered to be a material fact. In the future, FSIS will reassess the production and consumption volume of nonmajor cuts that are not ground or chopped and will determine the levels of consumption of these products and whether sufficient nutrition information is being made available about them. After FSIS assesses the volume of these products and assesses the adequacy of nutrition information provided for them, FSIS will determine whether it is necessary to propose nutrition labeling requirements for these products, and whether nutrition labeling requirements for these products would be beneficial.

Should this rule become effective, if establishments or retail facilities voluntarily provide nutrition information for nonmajor cuts of meat and poultry products that are not ground or chopped, they will have to provide it according to the nutrition labeling requirements for the major cuts. Should establishments or retail facilities choose to provide nutrition information for these products, they will have to either provide it at the point-of-purchase, in accordance with § 317.345 or § 381.445, or on their label, in accordance with § 317.309 or § 381.409. Thus, the nutrition labeling provisions for these products will be consistent with those for the voluntary nutrition labeling program.

As proposed, the supplemental proposed rule would allow nutrition information for the major cuts and nonmajor cuts of single-ingredient, raw products that are not ground or chopped to be declared on either an ''as packaged'' basis or an ''as consumed'' basis because most of these products will not need FSIS compliance scrutiny. If FSIS conducts nutrient analysis of products under 317.309(h) or 381.409(h), it does so on the packaged product. If nutrition information for these products is based on USDA's National Nutrient Database for Standard Reference, and there are no claims on the labeling, FSIS will not conduct a nutrient analysis of these raw products and, therefore, will not evaluate ''as packaged'' nutrition labeling information for these products.

Also consistent with the proposed rule, under this supplemental proposed rule, the declaration of the number of servings per container would not need to be included on the nutrition label for the major or nonmajor cuts of single-ingredient, raw products that are not ground or chopped, because these products are typically random weight products. Existing regulations do not require the number of servings on the nutrition label of random weight products (*see* §§ 317.309(b)(10)(iii) and 381.409(b)(10)(iii)).

Ground or Chopped Products: Consistent with the proposed rule, this supplemental proposed rule would extend the mandatory nutrition labeling requirements to all ground or chopped products, including single-ingredient, raw ground or chopped products, unless an exemption applies. Should this rule become effective, FSIS will require that nutrition labels be provided for all ground or chopped products (livestock species) and hamburger, with or without added seasonings, unless an exemption applies. This rule would also require that nutrition labels be provided for all ground or chopped poultry products, with or without added seasonings, unless an exemption applies. After analyzing the comments and for the reasons discussed in the proposed rule and discussed below in the response to comments section, FSIS has concluded that ground or chopped meat and poultry products that do not bear nutrition information on their label are misbranded under 21 U.S.C. 601(n)(1) and 453(h)(1).

FSIS recognizes that single-ingredient, raw ground or chopped products have not been required to bear nutrition labels. In the proposed rule, FSIS explained that, on June 3, 1997, the Center for Science in the Public Interest (CSPI) submitted a petition to the Agency stating that FSIS should require complete ''Nutrition Facts'' on ground beef labels that make nutrient content claims. This petition brought many of the issues concerning the need for nutrition labeling of ground or chopped products to FSIS's attention. Consistent with CSPI's petition, FSIS has determined that nutrition information should be required on packages of all ground or chopped meat and poultry products, unless an exemption applies. (For more information on the petition from CSPI, *see* 66 FR 4975, January 18, 2001).

Most industry commenters did not support requiring on-package nutrition information for ground or chopped products. Some of these commenters supported requiring nutrition labeling for these products at their point-of-purchase. Individuals, consumer organizations, and nutrition organizations supported mandatory nutrition labeling on the packages of ground or chopped products.

FSIS requests comments on how retailers or official establishments would prepare point-of-purchase materials that would address all possible combinations of percent fat and percent lean in ground or chopped products. FSIS also requests comments on how point-of-purchase materials would convey the nutrient values of ground or chopped products that contain AMR product or product from low temperature rendering (*e.g.,* finely textured beef or lean finely textured beef). In addition, FSIS requests comments on how consumers would identify which nutrient values on point-of-purchase materials correspond to specific ground or chopped products available in the store, if a statement of fat percentage or lean percentage is not *required* on the product. Such statements would not be required under this supplemental proposed rule. Finally, FSIS requests surveys, studies, or other data on consumers' perception and use of point-of-purchase materials versus nutrition labels for ground or chopped products and on consumers' understanding of the nutrient content of such products.

Exemptions: This supplemental proposal would provide all the exemptions that it proposed for the major cuts of single-ingredient, raw meat and poultry products and for ground or chopped products for the reasons set forth in the proposal. Consistent with the proposed rule, it does not provide an exemption for ready-to-eat ground or chopped products packaged or portioned at retail or multi-ingredient ground or chopped products that are processed at retail. As FSIS explained in the 2001 nutrition labeling proposed rule, there may be a significant amount of multi-ingredient ground beef retail processed products or ready-to-eat retail packaged products. Also, as was stated in the proposed rule, FSIS no longer believes enforcement of nutrition labeling requirements at retail stores to be impractical because FSIS is already conducting testing for *E. coli* O157:H7 at retail.

In response to comments, the supplemental proposal provides an

exemption from nutrition labeling requirements for products that are ground or chopped at an individual customer's request and that are prepared and served or sold at retail, provided that the labels or labeling of these products bear no nutrition claims or nutrition information.

Enforcement and Compliance: Consistent with the proposed rule and the reasons discussed in it, under this supplemental proposed rule, FSIS would sample and conduct nutrient analysis of ground or chopped products to verify compliance with nutrition labeling requirements, even if nutrition labeling on these products is based on the most current representative database values contained in USDA's National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference and there are no claims on the labeling. Also consistent with the proposed rule, for the major cuts that are not ground or chopped, if nutrition labeling of these products is based on USDA's National Nutrient Data Bank or the USDA's National Nutrient Database for Standard Reference, and there are no nutrition claims on the labeling, FSIS would not sample and conduct a nutrient analysis of these products.

Permitting Percent Lean Statements on labels or in labeling of ground or chopped products: Consistent with the proposed rule, the supplemental proposed rule would permit a statement of lean percentage on the label or in labeling of ground or chopped meat and poultry products that do not meet the regulatory criteria for ''low fat,'' as long as a statement of fat percentage is contiguous to, in lettering of the same color, size, and type as, and on the same color background as, the statement of lean percentage. Because the percent fat statement must be contiguous to the percent lean statement and must be in lettering of the same color, size, and type as, and on the same color background as, the lean percentage statement, FSIS believes that the percent lean statements will not mislead consumers.

Under the proposed rule, if small businesses produced ground or chopped product and included a statement of lean percentage and fat percentage on the product's label or in labeling, the business would have been required to include nutrition information on the product label. Based on the National Cattleman's Beef Association (NCBA) National Meat Case Study in 2004, 93 percent of ground beef packages had statements of lean or fat percentages. Sixty-eight percent of packages with such statements had nutrition facts panels and 25 percent did not. Because 25 percent of ground beef packages in the NCBA study had statements of lean or fat percentages but did not have nutrition facts panels, FSIS found it reasonable to conclude that many small businesses may include a statement of the lean percentage on the label of ground products but may not include nutrition facts panels on the product label. On this basis, FSIS concluded that requiring small businesses that use the lean percentage statement on the label of ground products to also include nutrition information on the label of such products may result in significant expenses for small businesses. Therefore, in this supplemental proposed rule, small businesses that use statements of percent fat and percent lean on the label or in labeling of ground products would be exempt from nutrition labeling requirements, provided they include no other nutrition claims or nutrition information on the product labels or labeling.

The majority of industry associations supported the use of a statement of lean percentage on the label or in labeling of ground products that do not meet the regulatory criteria for ''low fat.'' Because of the longstanding use of the statements of percent fat and percent lean on the label or in labeling of ground beef and hamburger products, FSIS has concluded that such statements on the label or in labeling of ground products produced by small businesses will not mislead consumers, even if the small businesses do not include nutrition information on the products' labels.

However, individuals and consumer and nutrition organizations generally did not support the use of statements of lean percentages on the label or in labeling of ground or chopped products that do not meet the regulatory criteria for ''low fat.'' Therefore, FSIS requests comments on whether such statements should be prohibited on the label or in labeling of ground or chopped products that do not meet the regulatory criteria for ''low fat.'' FSIS requests comments on whether lean percentage statements are inherently misleading to consumers on the label or in labeling of ground or chopped product that does not meet the regulatory criteria for ''low fat'' when contiguous to fat percentage statements, as the rule would require. FSIS also requests comments on whether lean percentage statements are redundant on the label or in labeling of such products when contiguous to fat percentage statements. If commenters believe the regulations should prohibit lean percentage statements on the label or in labeling of ground or chopped products that do not meet the ''low fat'' criteria, FSIS requests comments on whether a fat percentage statement on the label or in labeling of such products would be useful. If commenters believe such a statement would be useful, do they believe it should be required on the label or in labeling for these products?

FSIS also requests comments on whether the final rule should allow a lean percentage statement and fat percentage statement on the label or in labeling of ground or chopped products produced by small businesses if such product does not include nutrition information on the product label. If commenters believe that nutrition information should be required on labels of any ground or chopped product for which a lean percentage and fat percentage statement is provided on the label or in labeling, FSIS requests comment on the costs of this requirement for small businesses.

FSIS requests copies of surveys, studies, or other data on consumers' use and understanding of lean percentage and fat percentage statements on ground or chopped products.

Effective Date

Should this rule become final, FSIS intends that the requirements for ground or chopped products would become effective on January 1, 2012. FSIS issued final regulations to establish this date as the uniform compliance date for new food labeling regulations that are issued between January 1, 2009, and December 31, 2010 (73 FR 75564; December 12, 2008). As is discussed in the response to comments below, FSIS issued the uniform compliance regulations to minimize costs associated with on-package labels. Because this supplemental proposed rule would allow for the presentation of nutrition information for the major cuts of single-ingredient, raw meat and poultry products at their point-of-purchase, FSIS intends to make the labeling requirements for the major cuts effective one year from the date of publication of the final rule. FSIS requests comments on these two planned effective dates.

Availability of Nutrition Information

FSIS intends to make available nutrition labeling materials that can be used at the point-of-purchase of the major cuts at the following Internet address: *http://www.fsis.usda.gov.* Also, the Food Marketing Institute (FMI) has made available materials that can be used at the point-of-purchase of the major cuts at the following Internet address: *http://www.fmi.org/consumer/nutrifacts/.*

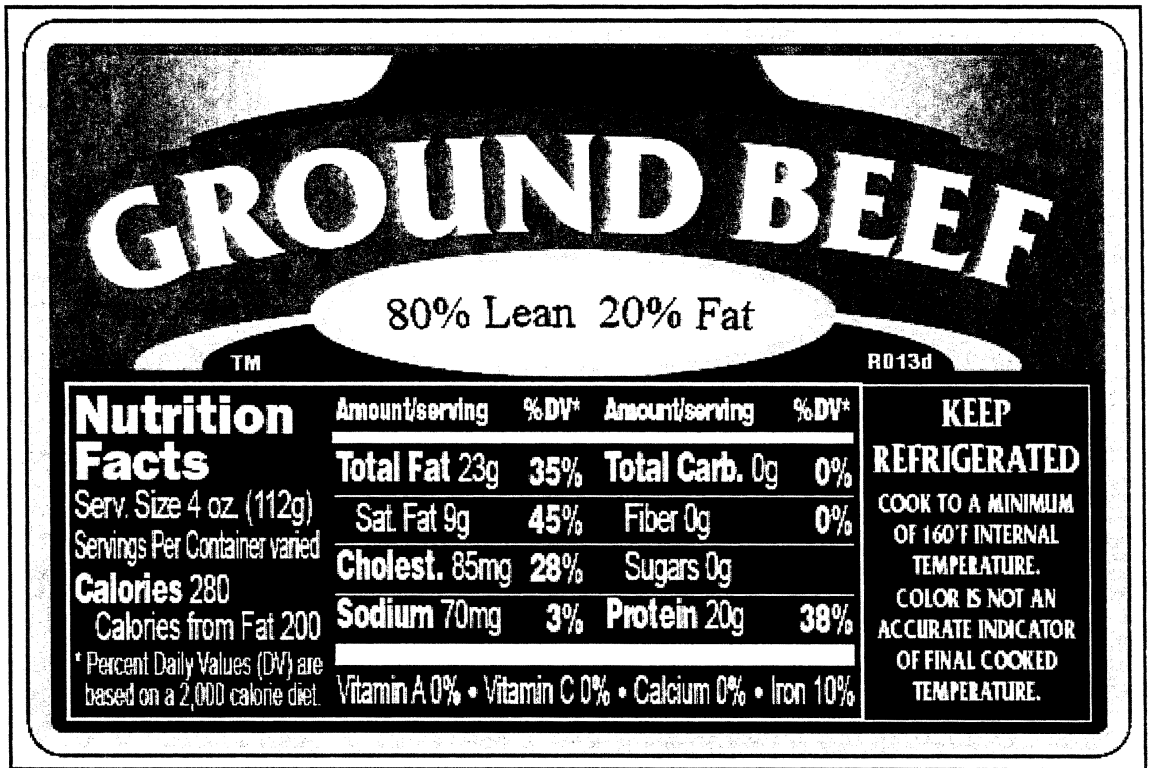
The USDA National Nutrient Database for Standard Reference is developed and maintained by the Agricultural Research Service (ARS) and can be found on the Internet at the following address: *http://www.ars.usda.gov\nutrientdata*. Information is available at this site for ground beef products containing 5%, 10%, 15%, 20%, 25%, and 30% fat. In addition, ARS has included a calculator on the Internet, with the Database. Parties can enter the amount of fat (5% to 30% percent fat) or lean (70% to 95% lean) in a particular raw ground beef product, and the calculator will calculate the nutrient values for the product based on the fat value entered.

The USDA National Nutrient Database for Standard Reference also includes a set of tables with nutrient values for ground pork with fat levels from 4 to 28%, in one percent increments. ARS did not develop a calculator because, at this time, labeling for ground pork at retail does not include statements of percentage fat or percentage lean. The USDA Nutrient Database also includes nutrient values for raw and cooked ground chicken but does not include nutrient values for such product at varying fat levels. Ground chicken is not typically produced over a wide range of fat levels. ARS also has nutrient data for three types of commonly marketed ground turkey products. Nutrient values for these products are not yet in the database. However, ARS expects that the nutrient values for these ground turkey products will be available in the database by August 2010. Most ground poultry products are produced and labeled at Federal establishments rather than at retail.

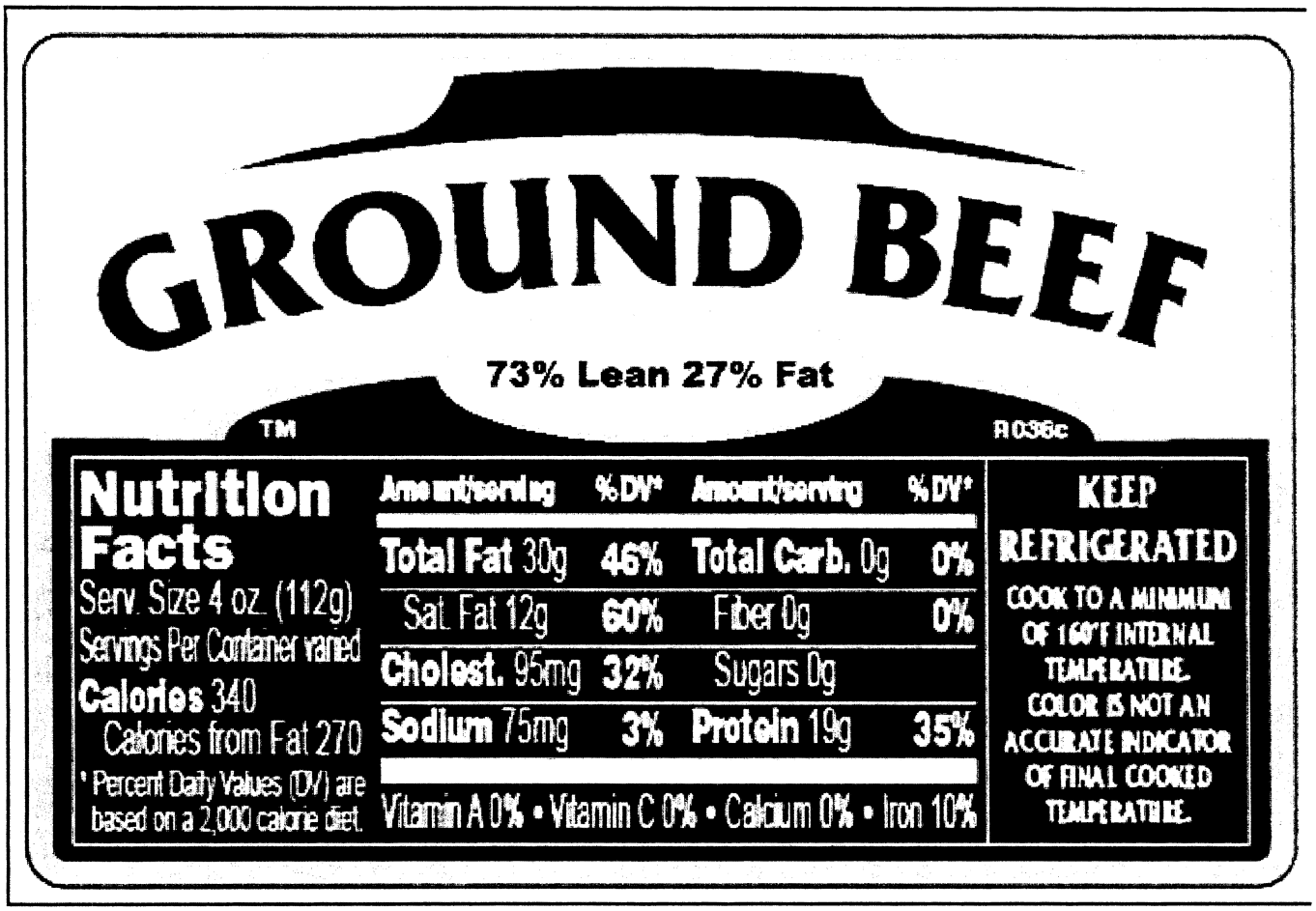
FSIS requests comments on whether provision of nutritional tables will be sufficient for retailers and establishments to provide nutrition labels for ground pork. FSIS also requests comments on whether the available data for ground chicken and ground turkey in the USDA Nutrient Database will be sufficient for retailers and establishments.

Below are examples of nutrition labels for ground or chopped products that would meet the requirements of the supplemental proposed rule. Should this rule become final, FSIS will make additional examples of acceptable nutrition labels for ground or chopped products available on the Agency's Web site.

BILLING CODE 3410–DM–P


GROUND BEEF
80% Lean 20% Fat
TM
R013d
Nutrition Facts
Serv. Size 4 oz. (112g)
Servings Per Container varied
Calories 280
Calories from Fat 200
* Percent Daily Values (DV) are based on a 2,000 calorie diet.
Amount/serving %DV* Amount/serving %DV*
Total Fat 23g 35% Total Carb. 0g 0%
Sat. Fat 9g 45% Fiber 0g 0%
Cholest. 85mg 28% Sugars 0g
Sodium 70mg 3% Protein 20g 38%
Vitamin A 0% • Vitamin C 0% • Calcium 0% • Iron 10%
KEEP REFRIGERATED
COOK TO A MINIMUM OF 160°F INTERNAL TEMPERATURE.
COLOR IS NOT AN ACCURATE INDICATOR OF FINAL COOKED TEMPERATURE.

100% PURE
Extra Lean Ground Chicken
96% Lean 4% Fat
TM
R006
American Heart Association ®
Meets American Heart Association food criteria for saturated fat and cholesterol for healthy people over age 2.
While many factors affect heart disease, diets low in saturated fat and cholesterol may reduce the risk of this disease.
Nutrition Facts
Serv. Size 4 oz. (112g)
Servings Per Container varied
Calories 130
Calories from Fat 25
* Percent Daily Values (DV) are based on a 2,000 calorie diet.
Amount/serving %DV* Amount/serving %DV*
Total Fat 4g 6% Total Carb. 0g 0%
Sat. Fat 1.5g 8% Fiber 0g 0%
Cholest. 65mg 22% Sugars 0g
Sodium 50mg 2% Protein 24g 48%
Vitamin A 0% • Vitamin C 0% • Calcium 2% • Iron 14%
Manufactured By AB, Inc. General Offices Dakota Dunes SD 57049



BILLING CODE 3410–DM–C

Summary of and Response to Comments

FSIS received approximately 5,000 comments on the proposed rule from individuals, consumer advocacy organizations, academia, trade and professional associations, health and nutrition organizations, two county health departments, meat and poultry producers, and food retailers. The majority of the comments (approximately 3,500) were generated from a letter writing campaign initiated by a consumer organization. In addition, there were approximately 450 form letters that expressed consumers' concerns and did not identify an affiliation with any organization, approximately 60 form letters from a consumer co-op organization, and two sets of form letters from relatively small retail chains (approximately 10 letters in each set).

A summary of issues raised by commenters and the Agency responses follows.

Nutrition Labeling for the Major Cuts of Single-Ingredient, Raw Meat and Poultry Products

Comment: The majority of letters from individuals, consumer groups, and health organizations stated that FSIS should require on-package nutrition labeling for all single-ingredient, raw meat and poultry products (major and nonmajor cuts). They stated that point-of-purchase materials fail to convey effectively the nutrition information for specific fresh meat or poultry products because the materials are difficult to find and difficult to read. Some of these commenters also stated that nutrition labels are particularly important for meat and poultry products because they are a major source of fat, saturated fatty acids, and calories.

A health organization stated that because the same cut of meat can be labeled by different names, consumers would be better served by nutrition information on the labels of the products. Several commenters stated that an advantage of including nutrition information on the label is that consumers could review the nutrient content once the product is taken home, and others, besides the primary food purchaser, would have better access to the nutrition information. A nutrition association stated that if FSIS permits point-of-purchase information for fresh meat and poultry packages, the Agency should require on-package messages directing consumers to point-of-purchase labeling at another location in the store.

One consumer association noted that a recent telephone survey showed an overwhelming percentage (78%) of the respondents said that it was ''more useful'' to provide nutrition information about raw meat and poultry products on package labels than on posters or brochures.

Comments from a coalition of health and consumer organizations suggested that the nutrient content for ground products often has less variance than the nutrient content of specific cuts. Thus, the coalition believes that it is more important to provide nutrition information on the labeling of major cuts than on ground products. The coalition also stated that the reasons provided by the Agency for mandating nutrition labeling on the packaging of ground products would be the reasons for mandating nutrition labeling on

packaging of the major cuts of meat or poultry (*see* 66 FR 4977). This coalition also stated that there are more major cuts than there are ground products, and it would be difficult for producers or retailers to develop point-of-purchase materials to address the different formulations and trim levels of the major cuts; and it would be difficult for consumers to locate the appropriate information for a particular cut on the point-of-purchase materials.

One health group stated that although on-package labeling may be a more effective approach for conveying nutrition information than point-of-purchase materials, the organization has historically supported the use of point-of-purchase materials as an acceptable means of nutrition labeling. This commenter also stated that for single-ingredient, raw products, other than ground or chopped products, the use of standardized averages is likely to be the most effective way to provide nutrition information, either on the package or at point-of-purchase. An individual also stated that for many major cuts, having the nutrition label next to the product would be sufficient.

A consumer organization did not believe that consumers have reasonable expectations as to the nutrient content, including the fat, of raw meat and poultry products. The organization referenced a consumer telephone survey in which most respondents were unable to identify which cut of meat had the highest fat content among four choices. One medical organization stated that although it may be true that the nutrient content of the major cuts is relatively uniform, consumers generally have no idea of the nutrient content of these foods.

The majority of industry and industry associations supported the continued use of point-of-purchase nutrition information materials for the major cuts, rather than nutrition labels on the packages of these products. Two of these groups presented results of focus group research demonstrating that consumers currently understand and use point-of-purchase materials in numbers comparable to the number of consumers who read and use the nutrition information on the labeling of products subject to the requirements of the mandatory nutrition labeling program. Additionally, according to the commenters, the focus group research demonstrates that consumers are generally satisfied with the current nutrition information provided for fresh meats.

One industry association stated that the use of individual nutrition labels may result in consumers' viewing a smaller portion of the product and paying a higher amount for the product, because of the cost associated with maintaining a vast number of labels to be placed on the package. Additionally, according to this commenter, if the consumer intends to trim the fat from meat or remove the skin from poultry products, the nutrition information on the label would not adequately represent the product's nutrition information after fat had been trimmed from it or skin from it had been removed.

One industry commenter stated that it is extremely difficult to provide accurate nutrition information for each major muscle cut because nutrient content varies depending on the breed and quality of each animal. Another industry commenter stated that although ''average'' numbers from the USDA database are appropriate for point-of-purchase materials, because of the potential variations in specific individual cuts, trims and grades, the average numbers are not appropriate for on-package labeling, where consumers justifiably expect a label to accurately define the exact nutrient content of what is in that package.

Two industry commenters stated that according to the Agency's own survey, 62.7% of men and 57.9% of women rarely or never use the nutrition information provided on raw meat, poultry or fish (*see* 66 FR 4982, January 18, 2001). They speculated that this low usage may in part be explained by the fact that consumers already have reasonable expectations regarding the nutrient values of these products as a result of industry's voluntary efforts to provide this information. Similarly, one retail association stated that consumers have reasonable expectations as to the nutrient content of major cuts, and that the nutrient content of a given major cut is relatively uniform across the market. An industry commenter stated that, unlike ground meat, consumers can see and remove the fat from whole muscle meat.

Another industry organization stated that single-ingredient, raw meat and poultry products have a unique quality: the structure of the cut, including the amount of fat, is visible both on the exterior and within the muscle cut. As a result, consumers can visibly discern which products are leanest. However, the commenter also believed that consumers would benefit from additional nutrition information because consumers cannot discern the quantitative nutrient content of single-ingredient, meat and poultry products without the nutrition information provided on point-of-purchase materials.

Response: As FSIS proposed, should this rule become final, it will require that nutrition information be provided for the major cuts of single-ingredient, raw meat and poultry products, either on the label or at the point-of-purchase. Although FSIS continues to agree with the commenters who stated that nutrition labels on the major cuts of single-ingredient, raw products are useful, FSIS believes that consumers have reasonable expectations as to the nutrient content of these products and can make comparative judgments about the fat content of the various cuts. While consumers' expectations for these products may not be perfect, they are significantly more aware of the nutritional content of single cuts of meat than the nutritional content of ground meat. Thus, the rule allows an alternative way of providing nutrition information for major cuts of single-ingredient, raw products. As is discussed above, even though FSIS believes that consumers have reasonable expectations concerning the nutrient content of the major cuts, without nutrition information for these products, consumers cannot assess specific nutrient levels in them and cannot make educated choices about consuming them. These educated choices are significant to a consumer's effort to construct a healthy diet.

FSIS does not believe that the telephone survey results used by a consumer organization in support of their belief that most consumers do not have reasonable expectations of the nutrient content of raw meat and poultry demonstrate that consumers do not have reasonable expectations concerning the major cuts. FSIS does not believe it is reasonable to expect consumers in a telephone survey to be able to identify which individual cuts of meat or poultry have the highest fat levels. However, if shown pictures of the various cuts (that are not ground or chopped), FSIS believes that most consumers could identify the cut with the most fat, by its internal marbling and external fat cover. The medical organization commenter that stated that consumers generally have no idea of the nutrient content of the major cuts provided no data to substantiate this statement.

Although individuals, and consumer organization commenters, stated that point-of-purchase materials are difficult to read, they provided no explanation for their assertion that these materials are difficult to read. Their other concern about the difficulty of finding point-of-purchase materials will be taken care of

by this rule. Should it become final, the rule will require that point-of-purchase materials be made available in close proximity to the food (§ 317.345(a)(3) and § 381.445(a)(3)).

Regarding the health organization's comment that the same cut of meat can be labeled by different names, and thus consumers would be better informed by nutrition information on a product's label, FSIS is not aware that consumers are confused about the names of the major cuts of single-ingredient, raw products listed on point-of-purchase materials. FMI was involved in developing these materials, and that organization has the most current names used to designate the major cuts. However, if necessary, retail facilities and establishments can include multiple names for a major cut on point-of-purchase materials. In addition, if FSIS is informed of specific cuts that are identified by different names, FSIS will revise the point-of-purchase materials that it is making available on the Internet.

After the comment period for the proposed rule ended, FSIS received correspondence from industry stating that the list of major cuts in the regulations should be changed to reflect more accurately the most popular cuts in the market. This correspondence recommended removing certain cuts and adding others. Because FSIS did not propose to amend the codified list of major cuts in the regulations and did not provide an opportunity for the public to comment on proposed changes to the list, FSIS is not amending the list of major cuts in the regulations at this time. However, FSIS will review this issue, and if the Agency determines that a change in the list of major cuts is warranted to accurately represent the market, FSIS will pursue future rulemaking.

Regarding the comments that noted that an advantage of including nutrition information on the label is that consumers can review the nutrient content of the product once the product is taken home, and others besides the primary food purchaser would have better access to this information, surveys, including the Diet and Health Knowledge Survey (DHKS), show that a majority of individuals report using labels while buying foods. Although the DHKS shows that adults who are not main household shoppers use labels, the survey shows that the main shoppers use labels at a higher rate than those who are not main household shoppers. Also, FSIS assumes that if individuals in a household have certain nutrition practices and needs, the person who purchases food for the household would take other household members' needs and preferences into account. In addition, FSIS assumes that purchased food would typically be consumed by members of the household and not thrown away.

In response to the comment that the nutrient content of the major cuts may be more variable than that of ground products, FSIS recognizes that there is significant variability in the nutrient content of the major cuts depending on the grade of the product and the levels of exterior fat on the products. However, the point-of-purchase materials that FSIS and FMI have developed to convey nutrition information for the major cuts take into account this variability and reflect average nutrition information for these products. The information on the point-of-purchase materials is meaningful and accurate for the major cuts. Consumers can view the point-of-purchase materials to make educated choices based on nutrition information among the different major cuts. In addition, to further distinguish among different packages of the same major cut, consumers can make comparisons based on levels of visible fat on the product.

This coalition's other concern that it would be difficult for producers or retailers to develop point-of-purchase materials to address the different formulations and trim levels of the major cuts need not be a concern. FSIS and FMI have made available nutrition information that can be displayed at the point-of-purchase of the major cuts of single-ingredient, raw meat and poultry products. These point-of-purchase materials will meet the nutrition labeling requirements of this rule, should it become final. Furthermore, requiring that all major cuts of single-ingredient, raw meat and poultry products bear nutrition labels would be a significant cost to the industry based on FSIS's supplemental proposed cost analysis.

Comment: Two industry commenters stated that it was appropriate for FSIS to provide point-of-purchase materials via the Internet. They believed that this would lessen the burden on retailers unable to develop appropriate customized nutrition information. One of these commenters also stated that the Agency should develop point-of-purchase materials so that the nutrition information supplied would be accurate and consistent.

With regard to the type of point-of-purchase materials used to display nutrition information, several commenters stated that easy to understand charts that convey the information would be more helpful and informative to consumers than a collection of individual labels on display. One industry organization commenter, however, stated that each option of the display of nutrition information on charts or on individual display panels had advantages. This industry organization believed that the presentation of information in charts which have vertical and horizontal columns, that cover multiple products, would allow consumers to make comparisons and would consume less space than individual labels. This organization also stated that charts are readily available to retailers. However, this organization felt that consumers might be more familiar with single nutrition panels than with nutrition charts covering multiple products. Nevertheless, this organization believed that the provision of nutrition panels for every major cut at their point-of-purchase would be costly and would consume a significant amount of space in retail settings. Thus, the organization concluded that retailers should have the freedom to present nutrition information in any way that suits customer needs, so long as it is not misleading. Accordingly, the commenter suggested that USDA conduct research to determine the best method of presenting such information.

Several industry commenters stated that the Agency should describe the information required but should not prescribe a specific format or presentation of the information so that retailers that want to develop customized point-of-purchase materials can develop customized materials. These commenters believed it was important to provide as much flexibility in the development of nutrition materials as possible. One of these commenters also stated that the Agency should only prescribe the specific required presentation of the nutrition information after significant consumer testing.

Response: The Agency will provide nutrition information for the major cuts of single-ingredient, raw products that retailers can use at point-of-purchase at the following Internet address: *http://www.fsis.usda.gov*. Point-of-purchase materials are also available from FMI at the following Internet address: *http://www.fmi.org*. At this time, FSIS intends to provide information on charts with columns that cover multiple products, rather than providing a compilation of individual nutrition facts panels. The Agency does not intend to conduct consumer surveys or additional research to determine whether individual nutrition labels or charts covering multiple products would best address

consumer needs because most comments received on this issue supported the use of charts covering multiple products.

The Agency agrees with commenters that it is important to provide as much flexibility as possible in the presentation of nutrition information on point-of-purchase materials for the major cuts of single-ingredient, raw products. Therefore, should this rule become final, FSIS will allow point-of-purchase nutrition information for the major cuts to be presented through a variety of means, including signs, brochures, notebooks, or leaflets in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. Furthermore, if there is no nutrition claim made on the point-of-purchase materials, they will not be subject to any of the format requirements applicable to on-package nutrition labels. However, if a nutrition claim is made on the point-of-purchase materials, all of the format and content requirements applicable to on-package nutrition labels in §§ 317.309 and 381.409 will apply.

Consistent with existing voluntary and mandatory nutrition labeling program regulations, should this rule become final, the Agency will provide more flexibility for the presentation of nutrition information for the major cuts at the point-of-purchase than for the presentation of nutrition information on labels. FSIS believes this is appropriate and necessary because there is no small business exemption from nutrition labeling requirements for the major cuts. Also, FSIS does not want to impose any burden on retailers that are following the voluntary guidelines for voluntary nutrition labeling.

Comment: One animal protection organization supported allowing nutrition information for the major cuts of single-ingredient, raw products to be provided on an ''as packaged'' basis, as opposed to an ''as consumed'' basis, because there are numerous cooking methods, and the cooking method used could affect the nutrient content of the product. In addition, one industry association supported allowing nutrition information to be provided on an ''as consumed'' basis for the major cuts of single-ingredient, raw products.

Response: As proposed, for the major cuts and nonmajor cuts of single-ingredient, raw products, should this rule become final, it will allow nutrition information on the label or on point-of-purchase materials to be declared on either an ''as packaged'' basis or ''as consumed'' basis because, as noted in the proposed rule, most of the major cuts of single-ingredient, raw meat and poultry products will not need FSIS compliance scrutiny (66 FR 4974, January 18, 2001). If nutrition information for these products is based on USDA's National Nutrient Database for Standard Reference, and there are no claims on the labeling, FSIS will not conduct a nutrient analysis of these raw products and, therefore, will not evaluate ''as packaged'' nutrition labeling information for these products. Consistent with the provisions in the voluntary nutrition labeling program, when nutrition information is presented on an ''as consumed'' basis, retailers or manufacturers will be required to specify a method of cooking that will not add nutrients from other ingredients such as flour, breading, and salt (§§ 317.345(d) and 381.445(d)). FSIS welcomes further comment on this issue.

Comment: An industry association and animal protection organization agreed that it was unrealistic to state the ''servings per container'' on the nutrition labels of the major cuts of single-ingredient, raw products because the majority of these products are random weight items.

Response: FSIS agrees that the number of serving per container is not necessary information on the nutrition labels of the major cuts or nonmajor cuts of single-ingredient, raw products, because these products are typically random weight products. For multi-ingredient and heat-processed products that must bear nutrition labels, the number of servings is not required on random weight products (§§ 317.309(b)(10)(iii) and 381.409(b)(10)(iii)).

Comment: Several industry groups believed that the voluntary nutrition labeling program should remain in place, and that FSIS should not require nutrition labeling of the major cuts of single-ingredient, raw products. One retail association stated that FSIS could improve voluntary compliance with nutrition labeling guidelines without requiring nutrition labeling for the major cuts by making the same free information available that it plans to make available under the new regulations. Similarly, a form letter that multiple retailers submitted stated that FSIS could increase compliance with the voluntary guidelines at less cost to consumers than the regulations would generate by providing free and updated information to retailers. Several individuals stated that the USDA should not establish new labeling requirements for meat products because they believed that current labeling on these products is sufficient.

As noted above, two commenters stated that according to the Agency's own data, 62.7% of men and 57.9% of women rarely or never use nutrition information on raw meat, poultry or fish. Given such low usage, the commenters stated that FSIS should not require nutrition labeling for the major cuts of single-ingredient, raw products but should be more flexible in encouraging greater participation in the voluntary program.

Two industry commenters questioned the accuracy of the USDA surveys that did not find significant participation in the voluntary nutrition labeling program. They stated that the USDA surveys in 1996 and in 1999 checked only for the presence of the ''new'' formatted nutrition information; one of these commenters stated that FSIS did not announce in the **Federal Register** that only ''new'' materials would be considered.

These commenters also noted that FSIS determined whether significant participation in the voluntary nutrition labeling program existed based on the number of stores found to be in compliance. However, these commenters stated that equal consideration should have been given to the volume of product for which nutrition information was provided and the numbers of shoppers given access to the information. These commenters noted that volume-weighted participation would have represented 60 percent participation in the voluntary nutrition labeling program.

One of the commenters that questioned the accuracy of the surveys also stated that the surveys were not conducted every two years; it is not clear that every chain company was included; neither the 1996 nor the 1999 survey reported on nutrition information that was applied in label form directly to the package; and the surveys may have included stores that the organization believes should be exempt from the nutrition labeling guidelines. The other commenter that questioned the accuracy of the surveys stated that, given a variance factor of 4% (a conservative margin of error based on 2,000 stores, according to the survey reports), store participation could have been 70.5% in 1995, 61.5% in 1996, and 58.5% in 1999. In other words, FSIS could have found significant participation existed in two of the surveys.

Response: FSIS continues to believe that nutrition information for the major cuts of single-ingredient, raw products is important and necessary. In addition, FSIS believes that requiring nutrition labeling of the major cuts of single-

ingredient, raw meat and poultry products will result in benefits. FSIS did encourage participation in the voluntary nutrition labeling program through meetings with industry. Further, nutrition labeling materials for the major cuts have been available on FMI's Web site for several years (*http://www.fmi.org*). Despite this and FSIS's encouragement of the use of such materials, the 1999 voluntary nutrition labeling survey found a lower rate of participation than the 1996 survey found. Thus, the fact that nutrition information was available was insufficient to ensure consumers received the necessary nutrition information. By making the guidelines currently in place for the voluntary nutrition labeling program mandatory, FSIS will ensure that consumers are provided with necessary nutrition information concerning the major cuts.

To determine how much of a behavioral response and change in dietary intake might result from providing more nutrition information on meat and poultry products in the proposed rule's benefits analysis, FSIS assumed that when labels and other sources of nutrition information were provided for raw meat and poultry products, the usage rates would rise to match nutrition label usage rates for food products as a whole (66 FR 4990, January 18, 2001). As FSIS noted, although some information was being provided for some single-ingredient, raw meat and poultry products, nutrition information for these products was not required. FSIS noted it could be reasonably assumed that when nutrition information becomes mandatory, more consumers will use the nutrition information for the major cuts of single-ingredient, raw products.

FSIS does not believe that the surveys conducted to determine whether there was significant participation in the voluntary nutrition labeling program were inaccurate because they were not conducted precisely every two years or because of the manner in which FSIS determined whether there was significant participation. FSIS's regulations provide that the Agency would evaluate significant participation every 2 years (§§ 317.343(e) and 381.443(e)). However, the timing of these surveys did not make them invalid. Although FSIS did not conduct the surveys precisely 2 years apart, the Agency conducted the surveys approximately every two years.

Further, the survey conducted in June 1995 included as participants in the voluntary nutrition labeling program those retailers who displayed at point-of-purchase either materials that were developed before or after issuance of the 1993 final rule on nutrition labeling. The older nutrition information materials, which were developed in 1992, did not comply entirely with the voluntary nutrition labeling program provisions in the 1993 final rule. For example, the older materials did not include the required percent daily values for certain nutrients. Therefore, the results of the 1995 survey may have actually overestimated participation in the voluntary nutrition labeling program.

Additionally, the 1996 and 1999 surveys correctly only counted a store as providing voluntary nutrition information for meat and poultry products if it displayed point-of-purchase materials that were developed after the final rule was published. FSIS program officials had decided that by 1996 retailers had had enough time to obtain the updated nutrition labeling materials for display in their stores. FSIS did not announce in the **Federal Register** that only ''new'' materials would be considered to meet the voluntary nutrition labeling program guidelines. However, FSIS met with industry organizations and informed them that, in the 1996 survey, the Agency would only consider ''new'' materials to meet the voluntary nutrition labeling program guidelines. It could reasonably be expected that stores that were participating in the program would replace the materials over the course of three years.

Moreover, consistent with its stated intention to sample all chain companies (58 FR 640, January 6, 1993), the contractor that conducted the surveys on behalf of FSIS used various sources to sample all chains, including Retail Diagnostics, Inc.'s listing of supermarkets, Progressive Grocer *Marketing Guidebook,* Progressive Grocer *MarketScope,* Chain Store Guide *Directory of Supermarkets & Convenience Store Chains,* and the latest U.S. Economic Census. Moreover, although the surveys do not report the number of stores found to be providing nutrition information on package labels, the surveys did take this into account. Retailers were considered to be participating in the voluntary program when they provided nutrition information on nutrition labels or on point-of-purchase materials, in accordance with program guidelines, for at least 90 percent of the major cuts sold at the facility.

FSIS correctly did not make a determination of whether there was significant participation in the voluntary nutrition labeling program based on the volume of product for which nutrition information was provided and the number of shoppers given access to the information. FSIS regulations clearly provide that a determination of whether significant participation in the voluntary nutrition labeling program existed was to be based on the percentage of companies evaluated that were participating in accordance with the guidelines. Significant participation would exist if at least 60 percent of all companies that were evaluated were participating in accordance with the guidelines. As is explained above, the term ''companies,'' as used in the regulations, refers to individual stores. The preamble to the 1993 nutrition labeling rule stated, ''FSIS will use a representative sample of stores to obtain the information necessary to assess participation'' (58 FR 640, January 6, 1993). FSIS developed these regulations through notice and comment rulemaking, and FSIS conducted the surveys consistent with the regulations and the 1993 preamble statement. No comments received in response to the November 27, 1991, proposed rule on nutrition labeling stated that significant participation should be based on the volume of product covered and the number of shoppers given access to this information.

In addition, as FSIS explained in the preamble to its final nutrition labeling regulations in 1993, it is important to provide nutrition information to consumers and, to the extent possible, to harmonize with FDA's voluntary program for raw fruit, raw vegetables, and raw fish (58 FR 640, January 6, 1993). Consistent with FSIS's regulations, FDA's regulations provide that substantial compliance exists with the guidelines for the voluntary nutrition labeling for raw fruits, vegetables, and fish when at least 60 percent of all stores that are evaluated are in compliance (21 CFR 101.43(c)).

The 1995 survey found that 66.5% of stores were participating in the voluntary nutrition labeling program; the 1996 survey found that 57.5% of stores were participating; and the 1999 survey found that 54.5% of stores were participating. Based on the regulations, stores were found to be participating in the voluntary nutrition labeling program if they provided nutrition information for 90% of the major cuts in their stores.

FSIS recognizes that, given a variance factor of plus or minus 4%, store participation could have been 70.5% in 1995, 61.5% in 1996, and 58.5% in 1999. However, even assuming a plus 4% margin of error, the 1999 survey showed that significant participation did not exist. Furthermore, given a

variance factor of 4%, store participation also could have been 62.5% in 1995, 53.7% in 1996, and 50.8% in 1999. Significantly, the 1999 participation rate was lower than the 1996 participation rate. As a result, FSIS concluded that it had an obligation under its regulations to institute this rulemaking. The Agency did not survey again after 1999.

Consistent with the regulations, the surveys assessed whether stores provided nutrition information for 90% of major cuts stocked in their stores (§ 317.343(b) and § 381.443.(b)). In addition, the surveys assessed whether stores provided nutrition information for a lower percentage of such products. The 1996 survey found that 59.4% of stores provided nutrition information, according to voluntary guidelines, for 70% to 90% or more of their major cuts. Thus, based on the 1996 survey, even if FSIS includes stores that provided nutrition information according to the voluntary guidelines for only 70% of their major cuts, this percentage of stores is not quite 60% and, thus, still does not meet the ''significant participation'' criteria in the regulations.

In the 1999 survey, 58.3% of stores provided nutrition information, according to the voluntary guidelines, for 50% to 90% or more of their major cuts. Again, this percentage of stores is still not quite 60% and does not meet the ''significant participation'' criteria in the regulations. Based on the 1999 survey, even if FSIS includes stores that provided nutrition information according to the voluntary guidelines for only 50% of their major cuts, FSIS still would not find 60% participation. (*See* Table 7 of the surveys on the FSIS Web site: *http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/Docs_98-005P.htm).*

Comment: One retail industry association stated that, unamended by a legislative vehicle comparable to the Nutrition Labeling and Education Act, the meat and poultry Acts do not give USDA the statutory authority to mandate nutrition labeling regulations for single-ingredient, raw meat and poultry products.

Response: FSIS believes that without nutrition information, the labeling of major cuts of single-ingredient, raw meat and poultry products fails to include material facts about the consequences of consuming these products. This information is necessary for consumers to have if they are to make educated choices that are necessary in structuring a healthy diet. FSIS has concluded that the lack of this information on the labeling of the major cuts causes the labeling of these products to be misleading. The FMIA and PPIA provide that a product is misbranded if its labeling is false or misleading in any particular (21 U.S.C. 601(n)(1) and 453(h)(1)). Without the nutrition information for the major cuts of single-ingredient, raw products that would be provided if significant participation in the voluntary nutrition labeling program existed, the Agency has concluded that these products would be misbranded under the FMIA and the PPIA (21 U.S.C. 601(n)(1) and 453 (h)(1)).

Mandatory Nutrition Labeling for Ground or Chopped Products

Comment: Many individuals, consumer organizations, and nutrition organizations supported mandatory nutrition labeling on the package for ground or chopped products. Several industry associations also supported these requirements and stated that these requirements were feasible and reasonable. One of these associations also stated that because ground meat products are formulated to have greater consistency and uniformity in their composition than other cuts, retailers can create a standard, on-package label that provides accurate, reliable nutrition information.

Consumer groups noted that several supermarket chains already include full nutrition facts labels on their ground beef products. These commenters believed that required nutrition labels for ground or chopped meat and poultry products would create the most informative and clear information for consumers.

Consumer and industry commenters stated that consumers cannot visually detect the fat content of ground beef products, and without on-package labeling, consumers cannot easily determine what nutrition information provided on point-of-purchase materials would apply to individual packages of ground products. However, one of the industry commenters that supported on-package nutrition labeling had concerns regarding the economic impact of this labeling.

Most industry trade associations and grocer associations did not support on-package nutrition labeling information for ground or chopped products. One industry association stated that the FMIA and PPIA do not support on-pack nutrition labels for ground or chopped products. Another industry association stated that consumer education regarding the nutritional qualities of meat and poultry products, in conjunction with mandatory point-of-purchase labeling, would provide consumers with sufficient information for ground or chopped meat and poultry products. Similarly, a third industry association supported mandatory nutrition labeling for ground or chopped products, provided it could be provided at their point-of-purchase.

Industry commenters stated that there is not room on the label of ground products for a nutrition facts panel. Two commenters stated that nutrition labels for ground or chopped products should be exempt from the current type size requirements or the labels will be too large; alternatively, these commenters suggested that FSIS should allow use of the linear label format.

Two industry commenters stated that results from surveys conducted in March 2001 indicated that the majority of their members routinely test for fat in ground beef. However, they believe that few retailers can determine nutrient or fat content of ground product blended at the store. Similarly, several other industry commenters stated that few retailers have, or could afford, equipment to determine the nutritional content, including fat, for the products they grind. Therefore, according to these commenters, mandating nutrition information on labeling may constrain small operations, limit the variety of ground products, and dissuade the practice of grinding at the request of the customer. An individual also stated that the proposed requirements for ground or chopped products would not be feasible for small grocers.

One retail industry association stated that, although retailers can readily measure the fat content of ground product, establishing the exact nutrient profiles on a daily basis would not be feasible. According to this commenter, if products were analyzed, they would no longer be salable by the time analytical results became available. Another retail industry association stated that some retail stores have access to fat content by using a fat analyzer when doing in-store grinding of meat or poultry products; however, testing for additional nutrient content would require the use of a laboratory and would prove costly. Another industry commenter stated that large, centrally processed ground products can be formulated to precise fat contents, but many ground products produced in retail settings cannot.

Two industry associations supported the required nutrition labels on ground or chopped products that are ''case-ready'' but not for products prepared and packaged at retail. Like other industry commenters summarized above, these commenters stated that retailers do not have the equipment

necessary to determine the finished product's nutrient content.

Two associations stated that most consumers purchase ground products based on percent lean, the cut, or the cost of product, rather than based on the other nutrient content information. Another association stated that according to survey data, 45% of consumers choose ground beef based on price, 23% based on cut, and 9% based on fat content.

Response: Should this rule become final, FSIS will require on-package nutrition information for these products rather than allowing nutrition information to be provided at their point-of-purchase for the reasons stated in the proposed rule. Because there are numerous formulations of ground or chopped products, it would be difficult for producers or retailers to develop point-of-purchase materials that would address all the different formulations that exist for these products. Furthermore, it would be difficult for consumers to find the correct information for a specific ground or chopped product on point-of-purchase materials that include information concerning numerous formulations of these products (66 FR 4977, January 18, 2001). If a statement of the fat percentage and lean percentage is not included on a package of ground product, consumers would not know which nutrient data concerning ground product on point-of-purchase materials would apply to that particular ground product. Establishments and retailers are not currently required to provide such a statement and will not be required to provide such a statement when this rule becomes effective.

The FMIA and PPIA do support on-package nutrition labels for ground or chopped products. The FMIA and PPIA provide that a product is misbranded if its labeling is false or misleading in any particular. FSIS has concluded that ground or chopped meat and poultry products that do not bear nutrition information would be misbranded under 21 U.S.C. 601(n)(1) and 453(h)(1). Information concerning the nutritional qualities of ground or chopped meat and poultry products is particularly important because these products, especially ground beef, are widely consumed. Pertinent nutritional information is integral to consumer purchase decisions because use of this information may result in the prevention of health problems and the reduction of health risks for some consumers. Additional information about the nutrient values of ground or chopped meat and poultry products would enable consumers to make informed decisions about including these products in their diets and will, therefore, help consumers to construct healthy diets.

Thus, consistent with the recommendations from individuals, consumer organizations, and some industry comments, should it become final, this rule will require nutrition labels on all ground or chopped meat and poultry products, with or without added seasonings, unless an exemption applies. The rule will also require nutrition labels on packages of single-ingredient, raw ground or chopped products, rather than at their point-of-purchase. These products are similar to multi-ingredient products in the mandatory nutrition labeling program (which requires nutrition information to be on the label of individual packages). Just as producers can control the incoming ingredients and levels of such ingredients in multi-ingredient products, producers can precisely control the fat content of ground or chopped products to obtain the desired product. In addition, just as consumers cannot often see all the ingredients in multi-ingredient products, consumers cannot easily see the fat in ground or chopped products. The fat is uniformly distributed throughout the product and is not clearly distinguishable on the surface of the product. Therefore, consumers cannot estimate the fat levels in these products and cannot compare the fat levels in these products to those in other products. Thus, it is difficult for consumers to have a reasonable expectation of the nutritional quality of these products.

Many grocers and manufacturers currently provide nutrition facts panels on ground beef products; therefore, FSIS questions why certain commenters stated that there is not sufficient room on the label of these products for nutrition information. In addition, FSIS continues to believe that, unlike other single-ingredient, raw products, producers are able to formulate precisely the fat content of ground or chopped products. If, as some commenters suggested, grocers cannot determine the fat percentage in ground or chopped beef produced at retail, FSIS questions how they can be certain they produce product that meets the standard of identity for ground or chopped beef, which requires that the product not exceed 30 percent fat (*see* § 319.15).

Information on ground beef products containing 5%, 10%, 15%, 20%, and 25% fat is available through ARS at the following Internet address: *http://www.ars.usda.gov\nutrientdata*. In addition, ARS has included a calculator on the Internet, with the Database, that allows parties to enter the amount of fat (5% to 30% fat) or lean (70% to 95% lean) in a raw ground beef product. The calculator will calculate the nutrient values for the product based on the fat or lean value entered. If retailers are able to determine the fat content, as two industry commenters suggested they could, they can use the ARS nutrient database to obtain the information necessary to help them determine other nutrient values in the product.

Additionally, the nutrition labeling requirements for ground or chopped products should not be particularly difficult for small operations, since ground or chopped product produced by retail establishments and Federal establishments that meet specific small business criteria will be exempt from nutrition labeling requirements (§§ 317.400(a)(1) and 381.500(a)(1)).

Moreover, a new exemption from the nutrition labeling requirements, that is provided in this supplemental proposed rule, should alleviate any concerns that nutrition labeling requirements will discourage retailers from grinding product based on customers' requests. Should it become final, the rule will provide an exemption from nutrition labeling requirements for ground or chopped products that are ground or chopped at an individual customer's request and that are prepared and served or sold at retail, provided that the labels or labeling of these products bear no nutrition claims or nutrition information.

If an individual customer selects an intact product for purchase and requests that the product be ground at the retail facility, FSIS has determined that nutrition information on the package of the ground product would not be necessary. In this instance, the customer has made the decision to purchase the product *before* it was ground. The customer is not selecting the product from among various, formulated, ground or chopped product, and thus the reasons for requiring a nutrition label on such a product would not be applicable here.

Comment: One animal protection organization stated that the nutrition information should be presented on an ''as packaged'' basis for ground or chopped meat and poultry products, and that ''as consumed'' information should be in addition to, not instead of, ''as packaged'' information. No commenters suggested that ''as consumed'' information alone was adequate.

Response: FSIS agrees with the commenter. Should it become final, the rule will require, as proposed, that nutrition information on the labels of

ground or chopped products be presented on an ''as packaged'' or ''raw'' basis. Although not required, a second column can be added to show nutrition information on the product on an ''as consumed'' or ''cooked'' basis. The regulations provide that if a product is commonly combined with other ingredients or cooked before eating, and directions for such combinations or preparations are provided, another column with nutrition information may be used (9 CFR §§ 317.309(b)(15) and (e) and 381.409(b)(15) and (e). Therefore, the nutrition information required on packages of ground or chopped products will be consistent with the information required on multi-ingredient and heat processed products. FSIS requests further comment on this issue.

Comment: FSIS did not receive any comments on how much meat derived from advanced meat/bone separation and recovery (AMR) systems or how much low temperature rendered product is currently being used in ground or chopped products. However, an industry organization stated that the use of product from AMR systems in ground beef products would not cause a dramatic change in the nutrient content of the product such that it would be misleading to consumers. The commenter noted that, based on the data FSIS presented (*see* 66 FR 4976, January 18, 2001), the level of cholesterol in product containing meat from AMR systems is slightly elevated, and the level of iron in the product is above 20 percent of the value of iron product not containing meat from AMR systems. However, according to the commenter, the studies were not performed in a compliance context, and FSIS did not provide information concerning the historical levels of iron or other information that would shed light on whether the difference accords with good manufacturing practices.

Response: FSIS presented information concerning ground beef with AMR product for illustrative purposes only. The data show an increase in the level of calcium over what would occur if good manufacturing practices were used. Similarly, iron levels in ground beef that includes AMR product may be higher than those in ground beef that does not include AMR product.

In meetings with FSIS, representatives of the meat industry have stated that the percentage of ground beef with AMR product and the level of AMR product in ground beef is higher than FSIS previously thought. FSIS continues to believe that one of the reasons nutrition information on the labels of ground or chopped meat products is important is because producers may use product from AMR systems in some of these products, and the use of AMR product can affect the nutrient values of these products. Finally, even though FSIS issued an interim final rule on AMR that provides specific restrictions on the levels of calcium and iron in AMR product (69 FR 1874, January 12, 2004), nutrition labeling of ground products that may contain AMR product is necessary to understand the nutritional profile of the food.

Comment: FSIS received few comments regarding consumer expectations of the fat content of ground products. One industry commenter stated that consumers do not have reasonable expectations of the nutrient content of ground products given the wide variation of fat and lean content.

Response: FSIS agrees that consumers do not have reasonable expectations of the nutrient content of ground or chopped products. Unlike whole muscle product, most consumers cannot visually discern which ground or chopped products have less fat, and which products have more fat, because the fat is ground in with the lean portion. In addition, producers may use meat from AMR systems and low temperature rendering in ground or chopped beef and pork products, which may affect the variability of these products.

No Requirements for Nonmajor Cuts

Comment: Several industry groups supported the proposal *not* to require nutrition labeling on nonmajor cuts that are not ground or chopped (*e.g.,* pork jowls, pigs feet, pork leg, pork shoulder picnic, and beef round rump) and did not believe such labeling was needed in the future. Two industry commenters stated that when grades and trim levels are considered, there are over 3300 cuts of red meat products, and it would be impossible to provide information on this number of products.

One industry group also indicated that the major cuts identified by the nutrition labeling regulations are still relevant today as representing the greatest share of fresh meat consumption, thus suggesting that it is more important that nutrition information be provided for these products than for the nonmajor cuts of single-ingredient, raw products.

As discussed above, the majority of comments from individuals, consumer groups, and health organizations stated that FSIS should require on-package nutrition labeling for all single ingredient, raw meat and poultry products (major and nonmajor cuts). An animal protection organization recommended that FSIS take no more than 24 months to investigate whether required nutrition labeling for single-ingredient, nonmajor cuts that are not ground or chopped is warranted.

Response: At this time, FSIS does not intend to require that nutrition information be provided for nonmajor cuts of single-ingredient, raw products that are not ground or chopped. FSIS has determined that it is not appropriate or necessary to require nutrition information for nonmajor cuts that are not ground or chopped at this time. They do not contribute in a major way to the diet. FSIS stated in the proposed rule that it intended to examine the current state of nutrition labeling for single-ingredient, raw products that are not ground or chopped and that are not major cuts (66 FR 4974, January 18, 2001). FSIS still intends to conduct this assessment but has not yet been able to do so because of competing priorities. Should this rule become effective, FSIS will examine and assess the adequacy of the nutrition information provided for the major cuts and will also determine whether sufficient nutrition information is being made available for the nonmajor cuts.

Permitting Percent Lean Statements on Labels or in Labeling of Ground or Chopped Products

Comment: Individuals and consumer and nutrition organizations generally did not support the use of statements of lean percentages on the label or in labeling of ground or chopped products that do not meet the regulatory criteria for ''low fat.'' A coalition of consumer and health and nutrition organizations stated that permitting such claims on packages of ground meat and poultry is inherently deceptive and will confuse consumers about the healthfulness of fresh ground meat and poultry products compared to other fresh meat, processed meat, and other foods. This coalition and an individual stated that a statement of fat percentage without a statement of lean percentage would be an effective means of allowing consumer comparison of ground products. Similarly, a medical school stated that, instead of a statement of ''lean'' on ground or chopped products, labeling of ground or chopped products should list the actual amount of fat in terms of ''x% fat or less.''

One medical organization suggested that instead of a statement of lean percentage as a quick reference, FSIS should allow a ''percent calories from fat'' statement on labeling of ground or chopped products. According to this commenter, this statement would allow comparisons among ground products and would also allow a comparison of

the amount of fat in the product to the daily amount of fat recommended in USDA dietary guidelines and the daily amount of fat recommended by other health associations.

One animal protection organization suggested that the use of percent lean statements is highly misleading since ''percent lean'' refers to percent by weight not percent of calories.

As a better means to compare ground products than a statement of the percentage fat and percentage lean in the product, one consumer organization noted that many packages of ground meat or poultry would meet the regulatory criteria for ''reduced fat,'' ''light,'' and ''lower fat'' nutrient content claims. This organization stated that such claims are now familiar to consumers, and that the use of such claims would ensure uniformity across product categories and reduce consumer confusion.

In contrast, an industry association did not support ''reduced fat'' labeling on ground products because, according to the commenter, it would penalize retailers who offer only the leanest products and do not offer those with higher fat content. In addition, the commenter believed that ''reduced fat'' labeling would be confusing to consumers who understand and have come to rely on the percentage fat and lean statements that are currently in use.

Two poultry industry associations did not support the provision for statements of lean percentages on ground or chopped products that do not meet the regulatory criteria for ''low fat.'' These associations stated that allowing the use of a statement of lean percentage on ground product that does not meet the regulatory criteria for ''low fat'' would be misleading, and that there is no basis for exempting ground product from the regulatory criteria for ''low fat'' that normally applies to product labeled ''lean'' (*see* §§ 317.362(e)(1) and (2) and 381.462(e)(1) and (2)).

The majority of industry associations supported the use of a statement of lean percentage on the label or in labeling of ground products that do not meet the regulatory criteria for ''low fat.'' They believed that the statement of lean percentage on ground beef products is not misleading and is a useful tool for consumers. Several commenters discussed telephone surveys whose findings indicated that the statement of lean percentage does not mislead consumers. The commenters stated that these surveys indicated that many consumers use the statements of lean and fat percentages as a basis for selecting ground beef products, and that most consumers understand that the statement of fat percentage indicates the percentage of fat in the product, not the grams of fat, percent Daily Value, or percent of calories from fat. Several industry associations stated that the percent lean and percent fat statements, in combination with the nutrition facts panel, will benefit consumers and allow consumers to quickly differentiate among ground products and determine how a serving of ground product fits into their overall diet.

One industry group recommended that FSIS consider allowing retailers to make a statement such as ''not more than 25% fat'' for a 75% lean/25% fat ground beef product, and one industry commenter recommended a tolerance for percentage content statements comparable to the tolerance allowed for nutrient value variations.

Response: The supplemental proposed regulations would permit a statement of lean percentage on the label or in labeling of ground or chopped meat and poultry products that do not meet the regulatory criteria for ''low fat.'' The regulations would require that a statement of fat percentage be contiguous to, in lettering of the same color, size, and type as, and on the same color background as, the statement of lean percentage.

Although individuals, consumer commenters and nutrition organizations generally did not support this provision, most industry commenters did. Industry commenters presented information from consumer surveys that showed that consumers understood the meaning of statements of lean and fat percentages on ground beef. Based on the survey information provided, interested consumers use this information as a quick way to compare ground beef products and as a means for ensuring the desired product is purchased. Additionally, based on the survey information discussed in the comments, consumers appear to understand that the percent lean statements simply indicate the percentage of lean versus fat in the products and do not interpret the information as a percent daily value (%DV) or percent of calories from fat in the product.

Producers, according to industry, have been using lean percentage statements on the labeling of ground beef and hamburger products for over 20 years (59 FR 26917, May 24, 1994). Because the percent fat statement must be contiguous to the percent lean statement and must be in lettering of the same color, size, and type as, and on the same color background as, the lean percentage statement, FSIS believes that the percent lean statements will not mislead consumers.

As the coalition and individual commenter suggested, producers may include a percent fat statement on the label or in labeling of ground products without including a percent lean statement, because a percent fat statement is factual information. A percent fat statement on ground or chopped products would be an acceptable alternative to a statement of lean and fat percentage. However, because of the longstanding use of the statements of percent fat and percent lean on the label or in labeling of ground beef and hamburger products, FSIS believes such statements on the label or in labeling of ground products will not mislead consumers.

As the consumer organization noted, ground or chopped products may meet the regulatory criteria for ''reduced fat'' or for ''light.'' The provisions for the statement of percent fat and percent lean in ground or chopped products will not preclude producers from using ''reduced fat,'' ''light,'' and other nutrient content claims.

In response to the suggestion that FSIS allow a ''percent calories from fat,'' FSIS already allows such a statement because it is factual information.

The current regulations do not preclude the use of the phrases ''x% fat or less'' or ''not more than x% fat'' on the labeling of ground or chopped product. The problem with the suggested alternative of listing the actual amount of fat in terms of ''x% fat or less'' or allowing statements such as ''not more than 25% fat,'' is that these statements are implied claims as defined by § 317.369 for red meat and § 381.469 for poultry products. In order to use the implied claim, ground products would need to meet one of the definitions for a nutrient content claim for fat content in § 317.362(b)(2) or (4) or § 381.462(b)(2) or (4). According to these regulations, to use such phrases, the product would have to be ''low fat,'' and most ground beef and hamburger do not qualify as ''low fat.'' Alternatively, the product would have to qualify as having ''reduced fat'' and would need to meet a 25% reduction in fat compared to a similar product.

Finally, in response to the industry suggestion that FSIS provide a tolerance for percentage content statements comparable to the tolerance allowed for nutrient value variations, the same tolerances allowed for nutrient value variations (317.309(h)(5) and (6) and 381.409(h)(5) and (6)) would apply to the statements of the percentages of lean and fat in the product, because these statements are based on information in the nutrition facts panel.

Exemptions for Nutrition Labeling

Comment: Two industry organizations stated that there should be a small business exemption from the nutrition labeling requirements for the major cuts. They argued that the Agency's stated rationale for not providing a small business exemption for these products (*i.e.,* that FSIS intends to make point-of-purchase materials available over the Internet free of charge) shows a lack of understanding of the challenges faced by small businesses and the economic hardships that the regulation imposes. These commenters stated that many small businesses do not have Internet access. Additionally, according to these commenters, small stores may not have space available to post the point-of-purchase materials.

Response: If retailers cannot obtain the point-of-purchase materials over the Internet, should this rule become final, FSIS personnel will have copies of the information to provide to retailers. Furthermore, the regulations will provide flexibility in regard to the manner in which the required presentation and posting of nutrition information for the major cuts must be done, so that all retailers should be able to post the information or have it available to consumers without using much space. For example, posters with nutrition information could be on walls near the products, or brochures or leaflets could be placed in a box near the products.

Comment: One animal protection organization did not support the small business exemption from nutrition labeling requirements for ground or chopped products. This commenter stated that the exemption could create a significant information gap in small towns and rural areas where large chain retail and grocery stores do not have a presence. Similarly, an individual stated that there should be no exemptions from the nutrition labeling requirements.

One industry group stated that ground or chopped products with or without seasonings, processed or packaged at retail must continue to be exempt from nutrition labeling requirements. This commenter stated that the quantity of ground products actually prepared at retail represents a small portion of the average diet.

Two industry commenters stated that FSIS should allow an exemption for ground or chopped products that are custom processed. They stated that when a retailer is only providing a service, not a food product, the retailer should not be expected to bear the cost of providing nutrition information, especially in rural areas where families raise their own animals and have a local meat market or supermarket provide the cutting and grinding service.

Response: FSIS believes that a small business exemption from nutrition labeling requirements is necessary for ground products, with or without seasoning. As explained in the proposed rule, small businesses should be exempt from mandatory nutrition labeling requirements for ground or chopped products because these requirements would create undue economic hardship for small businesses and would create disincentives for these small businesses to develop more nutritious food products (66 FR 4978, January 18, 2001). Therefore, should this rule become final, it will provide a small business exemption for ground or chopped products produced by retail facilities or official establishments that qualify for the exemption.

Should this rule become final, to qualify for the exemption, a retail store will either need to be a single retail store that employs 500 or fewer people or a multi-retail store operation that employs 500 or fewer people and will need to produce no more than 100,000 pounds of each ground product per year. For an official establishment to qualify for the exemption, it will need to be either a single-plant facility that employs 500 or fewer people, or a multi-plant company/firm that employs 500 or fewer people and will need to produce no more than 100,000 pounds per year of each ground product. As explained in the preamble to the proposed rule, ground or chopped products formulated to have different levels of fat would be considered different food products for the purposes of the small business exemption (66 FR 4978, January 18, 2001).

Should this rule become final, ready-to-eat ground or chopped products packaged or portioned at retail stores and similar retail-type establishments, and multi-ingredient ground or chopped products processed at retail stores and similar retail-type establishments, will be required to bear nutrition labels, unless the retail store or similar retail-type establishment qualifies for the small business exemption. Because a significant amount of ground beef is processed at retail, the Agency believes that there may be a significant amount of multi-ingredient ground beef retail processed products or ready-to-eat retail packaged products.

The Economics Research Service determined that ground beef accounted for 42 percent of all beef (boneless, trimmed-weight equivalent) consumed in 1996 (Putnam, Judy and Gerrior, Shirly, ''Americans Consuming More Grains and Vegetables, Less Saturated Fat, *Food Review,* Sept.–Dec., 1997, Vol. 20, Issue 3, pp. 2–12), and, as explained in the preamble to the proposed rule, most ground beef, traditionally, has been ground and packaged at retail (66 FR 4978, January 18, 2001). Therefore, ground beef products actually prepared at retail may represent a significant portion of beef consumed in the average diet.

When butchers custom grind product for customers, this product is considered a custom prepared product, and as such, this product will continue to qualify for an exemption from nutrition labeling requirements, should this rule become final.

Comment: One retail association and one consultant believed that the small business exemption for ground or chopped products should be phased in, in a manner similar to the way the small business exemption was phased in for nutrition labeling requirements in the 1993 FSIS final rule on nutrition labeling.

Response: FSIS disagrees with these commenters. Should this rule become final, the nutrition labeling requirements for ground or chopped meat and poultry products will apply to a much smaller number of products than the number of products subject to the 1993 final regulations on nutrition labeling. At this time, many businesses are familiar with nutrition labeling requirements; that was not the case in 1993. Therefore, as explained in the supplemental PRIA cost analysis, FSIS believes that it will not be costly for companies to add nutrition labels to packages of ground or chopped products.

Furthermore, many of the suppliers of coarse ground products that are then ground and packaged at retail have supplied, or can supply, the nutrition facts panels for the retailers. Most retailers offer a limited selection of ground beef products. Thus, dozens of different nutrition labels for each retailer will not be necessary. In addition, information for ground beef and other products is available through the National Nutrient Database for Standard Reference. In addition, should this rule become effective, the requirements for on-package nutrition labeling for ground or chopped products will not be effective until January 1, 2012.

Comment: Two industry commenters supported the continued exemption for multi-ingredient sausage products produced at retail. They stated that retail constraints in determining nutrient content support the continuation of the exemption. One

commenter asserted that the final regulation should specify that the provisions for ground or chopped products apply to product labeled as ''hamburger, (species or kind) burger or ground or chopped (species or kind)'' in order to differentiate such products from sausage products (ground meat with seasonings). This commenter stated that some parties might believe that the provisions for ground product apply to sausage products manufactured at retail.

Response: Nutrition information for sausage products are not covered by this regulation. Nutrition labeling requirements for these products were previously addressed in the 1993 nutrition labeling rule. Sausage, meat loaf, or beef patty mix are typically multi-ingredient products that are required to bear nutrition labeling, unless they qualify for an exemption, and multi-ingredient sausage products processed at retail will continue to be exempt from nutrition labeling requirements under § 317.400(a)(7)(ii) and § 381.500(b)(7)(ii). Because there is a standard of composition for ground or chopped beef (§ 319.15) and distinct standards of identity for sausage products, industry generally understands which products are referred to and labeled ''ground or chopped products'' and which products are referred to and labeled ''sausage products.''

In the 1993 final rule on nutrition labeling, FSIS exempted from mandatory nutrition labeling requirements multi-ingredient products processed at retail and ready-to-eat products packaged or portioned at retail. Therefore, multi-ingredient sausages processed at retail and ready-to-eat sausages packaged or portioned at retail are exempt from nutrition labeling requirements. The reasons that FSIS provided these exemptions in the 1993 final rule were that FSIS believed that it would be impractical to enforce nutrition labeling requirements on these products prepared or served at retail and because the Agency concluded, based on a review of National Food Consumption Survey (NFCS) data, that the average person's diet consisted of an insignificant proportion of ready-to-eat retail packaged products or retail processed products (58 FR 639, January 6, 1993).

Should this rule become final, FSIS will not exempt ready-to-eat ground or chopped products packaged or portioned at retail or multi-ingredient ground or chopped products that are processed at retail because, as FSIS explained in the 2001 nutrition labeling proposed rule, there may be a significant amount of multi-ingredient ground beef retail processed products or ready-to-eat retail packaged products. Also, FSIS no longer believes enforcement of nutrition labeling requirements at retail stores to be impractical because FSIS is already conducting testing for *Escherichia coli* O157:H7 at retail (66 FR 4979, January 18, 2001).

Enforcement & Compliance

Comment: One retail association stated that FSIS should include in the regulations provisions comparable to those in the Nutrition and Labeling Education Act (NLEA) such that retailers would not be subject to substantial civil and criminal penalties for violations of the nutrition labeling requirements. This commenter was concerned that, if the USDA requires nutrition labeling for the major cuts, retailers could be penalized for minor violations of these regulations. For example, the commenter suggested that if a poster providing nutrition labeling information falls down, the retailer could suffer substantial penalties.

This commenter also asserted that, with regard to FSIS product sampling and nutrient analysis, FSIS should continue to treat single-ingredient, raw ground products in the same manner it treats other single-ingredient, raw products. Therefore, the commenter stated, FSIS should not sample raw, ground products for which USDA data are used as the basis for the nutrition information on the label. Further, the commenter stated that if FSIS conducts sampling of ground products at retail for nutrient analysis, the ground products should only be analyzed for fat content. According to this commenter, once FSIS verifies the fat content of ground products, products labeled with corresponding USDA data values should not be subject to further compliance and enforcement.

An animal protection organization stated that ground products should be subject to nutrient analysis. This commenter stated that the USDA National Nutrient Database for Standard Reference includes only a limited number of ground products, and there are many others available on the market. According to this commenter, FSIS employees cannot, and should not be expected to, visually assess the product and compare it against its label.

Response: Products under FSIS jurisdiction are not subject to the NLEA. Nonetheless, FSIS does not consider it likely that substantial criminal penalties could be imposed for significant violations of the nutrition labeling requirements. FSIS stated in the preamble to the final January 6, 1993, nutrition labeling rule that it is not the Agency's intent to proceed in a punitive manner when problems surface during compliance monitoring (58 FR 657, January 6, 1993). Should this rule become final, FSIS will likely seek criminal penalties for violations of the nutrition labeling requirements in the same types of circumstances as it would for other labeling violations of the FMIA and PPIA. Consistent with its approach to enforcing existing nutrition labeling requirements, under this rule, if FSIS finds nutrition information on product labels that, based on FSIS or USDA data, is inaccurate, FSIS would contact the company and request that it either correct the information on the label or provide adequate justification to support the information. If the company failed to do so, FSIS would likely issue a letter of warning.

FSIS is authorized to issue letters of warning in lieu of seeking criminal penalties when the Secretary of Agriculture determines the public interest will be adequately served by a letter of warning. If the company continued to use the inaccurate label, FSIS could institute an administrative process to rescind the label approval under 9 CFR § 500.8 and could seize any product in commerce because it is misbranded. However, FSIS considers it highly unlikely that companies will continue to use inaccurate labels after FSIS has contacted them because introducing misbranded product in commerce is a prohibited act under 21 U.S.C. 610 and 458. FSIS is not authorized to impose civil penalties under the FMIA or PPIA.

With regard to FSIS product sampling and nutrient analysis of ground products, as FSIS stated in the preamble to the proposal, the fat content of different ground or chopped products can vary significantly, depending upon the level of fat in the product being ground and depending on whether product from AMR systems is used (66 FR 4980, January 18, 2001). Therefore, the procedures set forth for FSIS product sampling and nutrient analysis in §§ 317.309(h)(1)–(8) and 381.409(h)(1)–(8) would be applicable to ground or chopped meat and to ground or chopped poultry products, respectively. Should this rule become final, FSIS will not analyze ground or chopped products for fat only, because if the ground product includes AMR product or product from low temperature rendering (*e.g.,* finely textured beef or lean finely textured beef), the use of these materials could affect the nutrient values in the product.

With regard to FSIS product sampling and nutrient analysis, FSIS will not treat single-ingredient, raw ground or chopped products in the same manner that it treats other single-ingredient, raw products primarily because, as explained in the proposed rule, FSIS program employees cannot visually assess whether nutrition information on the label of ground or chopped products accurately reflects the labeled products' content. In most cases, it is not possible to visually assess the level of fat in a ground product. For example, FSIS program employees cannot visually determine whether product that is labeled 17 percent fat ground beef is actually 17 percent fat ground beef as opposed to 27 percent fat (or another percentage of fat) ground beef (66 FR 4980, January 18, 2001). Therefore, should this rule become final, FSIS will sample and conduct nutrient analysis of ground or chopped products to verify compliance with nutrition labeling requirements, even if nutrition labeling on these products is based on the most current representative data base values contained in USDA's National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference and there are no claims on the labeling. Therefore, FSIS will treat ground or chopped products as it treats all other products for which the regulations require nutrition information on their package. In the event that FSIS samples and conducts nutrient analysis of ground or chopped beef, if producers know the fat content of their product and have used USDA database values on the nutrition labels, FSIS would find the product's label in compliance with nutrition labeling requirements, provided the product's source materials did not include AMR product or product from low temperature rendering.

Costs and Benefits

Comment: Many commenters stated that the proposed rule would result in increased label costs. For example, one individual stated that it would cost a little more for production but did not think that it would affect the profit of major meat companies. Another individual stated that the rule would increase the final price of the product and require a change in packaging.

A small retailer who carries 26 different packages of ground meat in their stores and packages 6,000 packages per week stated that it would cost the company more than $22,600 a year in added costs due to labor and the additional labels that would be needed. Another small retailer estimated that the cost would approach $10,000 annually for adding a new poster and taking into account the necessary packaging, labor, and machinery modifications for ground or chopped products.

A beef producer believed that FSIS's cost estimates for requiring nutrition labeling for ground or chopped products are too low. This commenter stated that for those producers that must supply their own labels, the cost would be prohibitive. According to this commenter, if retail stores were to provide the information, the costs would be as calculated in the proposed rule. This commenter also believed that FSIS could still achieve its goal of having a large percent of compliance by making information on the label optional for certain groups that would be financially burdened. This commenter noted that FSIS estimated that the average weight of packages of ground or chopped products is 2 pounds and stated that the average weight of a package of pasture fed ground beef is between one and 1.5 pounds.

An animal protection organization contacted a major commercial laboratory that conducts nutrient analysis. This commenter stated that the laboratory charges $130 for a single sample analysis for total fat and saturated fat and $85 for cholesterol. The laboratory gives volume discounts for multiple samples.

According to an industry association commenter, the majority of retailers do not have equipment, such as a Fat-O-Meter or CEM analyzer, to determine the exact nutritional content, including the percentage of fat for their products. It is unlikely, according to this commenter, that retailers will be able to afford this type of equipment because it costs nearly $40,000.

A retail industry organization stated that according to Hobart, the company that manufacturers a large proportion of the scales used by retailers, 50 to 60 percent of supermarkets would need to upgrade their current printers, which represents $45 to $75 million in costs. Also, 40 to 50 percent of supermarkets would be required to replace their entire scale systems at the store level, which Hobart estimates would cost $54 to $90 million. In addition, according to this commenter, substantially more sophisticated and more expensive analytical equipment or laboratory testing will be needed to measure the nutrient profiles in ground products, which are likely to vary significantly in the context of USDA's compliance and enforcement standards.

Another retail industry association stated that a distributing company supplying 200 supermarkets estimated that the labeling requirement for ground or chopped products would affect over 20 million packages annually. Using the FSIS estimate of .005 cents per label, the labels alone would cost $100,000 per year. In addition, this commenter stated that although retail stores may be able to assess fat content by using a fat analyzer when doing in-store grinding, testing for nutrient content would require the use of a laboratory and prove costly. The commenter stated that these costs would cause many retailers that provide on-site custom service to increase prices or sell case-ready meat only, to the detriment of consumer choice.

Two individuals were concerned that the proposed rule would increase the price of meat; one stated that if people wanted nutrition information for meat and poultry products, stores would already provide the information on the packages.

In terms of the overall costs and benefits of compliance, an animal protection organization stated that, if the analyses and costs estimated by FSIS are accurate, it is evident that consumers need more information than they are currently getting. The commenter further stated that the costs to industry are negligible when compared to the benefits to the consumer.

An industry association stated that FSIS will also incur costs. According to this commenter, if the Agency requires on-package labeling for ground product, to verify compliance, it will be diverting a significant portion of its resources to the chemical analysis of numerous ground products produced at retail levels across the United States. The commenter also stated that, while FSIS has increased its level of sampling at the retail level for the purpose of microbiological sampling of *E. coli* O157:H7, it should also be able to collect additional samples for chemical analysis simultaneously. However, the commenter stated that FSIS would also be incurring new costs associated with sending samples to the laboratories as well as the actual cost of the analyses.

Response: FSIS recognized that the proposal, like many regulations promulgated by various government entities, would result in increased costs to various affected parties, so it is not surprising to FSIS that commenters would indicate that they would incur increased compliance costs. The commenter who stated that the rule would cost it $22,464 annually also stated that it produces 6,000 packages of ground beef per week or 312,000 packages per year. This equates to a per label cost of 7.2 cents. Another

commenter who said it would cost them $10,000 annually also said that they sell 100,000 packages annually. This equates to a per label cost of ten cents. Both estimates are significantly higher than any estimate prepared by FSIS. The Agency does not doubt that these retailers may incur higher labeling costs should this rule become final, but FSIS is unsure how their estimates were prepared. For example, FSIS is unsure as to whether these estimates include certain costs that should or should not be attributed to the proposal. At this time, the Agency is not in the position to accept these estimates as being comparable (in methodology or assumptions) to the costs presented by FSIS. As explained in the supplemental PRIA, FSIS estimates that retailers would incur the costs of upgrading store scales and printers to include nutrition information, redesigning larger store labels, providing nutrition analysis for each product, and using larger labels.

The Agency has reviewed the concerns of the beef producer but, with the limited supporting information provided, finds that the commenter's concerns are unconvincing. At no time does the commenter indicate what its costs might be, so it is difficult to determine how burdensome the requirements are for this producer.

The beef producer stated that the average weight of a package of pasture fed ground beef is between one and 1.5 pounds. However, in the supplemental PRIA cost analysis, FSIS estimates that the average weight of a retail package is 2.7 pounds (ranging from 1.7 pounds at the 5th percentile, to 4.35 at the 95th percentile). This estimate is from the National Cattlemen's Beef Association (NCBA), and FSIS believes this estimate better reflects the average weight of a retail package of ground product than the figure the commenter provided for pasture fed ground beef. NCBA's source is the Meat Purchase Diary, which is a survey. Although FSIS believes that NCBA data provide a sound estimate of the average weight of a retail package of ground product, there is some uncertainty in this estimate, because NCBA does not release any detailed data from its survey.

With regard to the comments on the cost of samples and nutrient analysis, the supplemental PRIA cost analysis includes costs of nutrition analysis ranging from $599 to $787 per modified label. These are costs required to create a nutrition facts panel. As explained in the cost analysis below, FSIS does not believe that the cost of a fat analyzer should be attributed to this rule. Stores may receive product for which a fat analysis has been performed and labeled accordingly. Also, as explained above, retailers currently must have a means of knowing that their product meets the standard of identity for ground beef.

With regard to the comment on the costs of upgrading scale printers, FSIS's supplemental PRIA cost analysis estimates the cost of updating scale printers at $2,400 per store or $56.35 million total. FSIS also estimated annual scale maintenance costs at $144 every year after the first year the scale has been purchased. Therefore, the supplemental PRIA analysis is consistent with the comment on updating scale printers.

In response to the comment that costs would cause many retailers that provide on-site custom service to increase prices, products that are ground or chopped at an individual customer's request and that are prepared or sold at retail are exempt from nutrition labeling requirements, provided the labels or labeling of those products bear no nutrition claim or nutrition information.

In response to the comments from individuals concerned that the rule would increase the price of meat, as explained in the supplemental PRIA cost analysis, the cost of this rule is not likely to be excessive relative to the volume of input of ground or chopped meat and poultry products sold at retail. The estimated cost of the rule on a per pound basis is $.0053. This increase in cost should not affect consumer purchases.

In response to the statement that nutrition information would be available if people wanted it, market forces have not been great enough to ensure significant participation in the voluntary nutrition labeling program. This fact could be evidence that consumers are not willing to pay for this information. Nonetheless, as is explained above, FSIS believes that consumers have reasonable expectations concerning the nutrient content of the major cuts of meat and poultry products, but they need precise information about the nutrient content of the major cuts in order to make a fully informed comparative judgment about the various cuts. In addition, the extent that such information conveys a negative credence attribute would limit its availability, if retailers were not required to disclose it. Without nutrition information for the major cuts of single-ingredient products and ground or chopped products, consumers do not have necessary and sufficient information to make informed purchasing decisions.

As far as the overall costs and benefits of compliance, the Agency believes that it has done a reasonable job in estimating the costs and benefits of the proposal.

In terms of cost to FSIS, in the Paperwork Reduction Act analysis, FSIS estimated that the costs of label and records review will total $300,000 annually. Other costs the Agency incurs as a result of this rule will be negligible. The rule will not increase inspection activities substantially. Similarly, it will not increase substantially the laboratory costs associated with FSIS sampling and testing for nutrient analysis. FSIS will conduct inspection and testing activities under this rule concurrent with existing inspection and testing activities.

Comment: A consumer organization asserted that FSIS overestimated the cost of the proposed rule by assuming that 20 percent of establishments would have to install new machinery for stamping, printing, or affixing nutrition labels for ground and chopped meat. The commenter believed that the 20 percent estimate is too high. FSIS's own 1999 survey showed that 97 percent of large chains, 91 percent of large independent retailers, and 84 percent of medium and small independents already complied with the label requirements of the final rule for Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry products. In addition, the commenter noted that small firms are exempt from the proposed rule.

Response: After the proposed rule was published, FSIS contracted with RTI International to assist the Agency in data collection and revising the cost analysis for the supplemental PRIA. Among the several changes based upon RTI's review, FSIS revised the label cost estimates. The supplemental PRIA assumes that retail facilities and official establishments have not yet incurred any costs for nutrition labeling of ground or chopped products or major cuts. However, the supplemental PRIA also estimates the current levels of nutrition labeling and adjusts cost and benefit estimates to reflect current levels of nutrition labeling.

Comment: According to a retail industry association, provisions requiring labels on individual packages of ground meat and poultry products will impose most costs and burdens upon independent retailers that offer custom service rather than pre-packaged case-ready meat. The commenter further alleged that the proposal would disproportionately affect independent operators and their customers, coercing retailers into increasing prices to cover increased costs or eliminating custom service because of the need to provide labeling for nutritional content of products ground in retail stores.

One individual stated that the proposed requirements would adversely affect small businesses. Also, a small producer stated that providing nutrition information on the labels of ground products would be difficult and costly for the small farmer or producer selling beef wholesale to stores.

Response: When Federal Agencies like FSIS issue rules, they are to make sure that the rules are fair to those being regulated. The Regulatory Flexibility Act requires Federal Agencies to consider the affect of regulations on small entities in developing regulations (*see* the Regulatory Flexibility Act Analysis below).

To minimize the burden on small businesses, should it become final, the rule will provide a small business exemption. In addition, the rule will provide an exemption from nutrition labeling requirements for ground or chopped products that are ground or chopped at an individual customer's request and that are prepared and served or sold at retail, provided that the labels or labeling of these products bear no nutrition claims or nutrition information. FSIS also intends to provide nutrition labeling materials for the major cuts of single-ingredient, raw products and for ground or chopped products on a free basis through its Web site. Retailers can display these materials at the point-of-purchase for the major cuts. Also, retailers and official establishments can obtain nutrition information for ground or chopped products at the following Web site: *http://www.ars.usda.gov.*

Comment: A consumer organization argued that FSIS underestimated the benefits of the rule by ignoring both the impact of meat and poultry consumption on non-fatal cases of heart disease and cancer and the impact on obesity and its consequences.

According to the commenter, FSIS limited its estimates of the benefits to the reduction in annual deaths from breast cancer, prostate cancer, colorectal cancer, and coronary heart disease. The commenter stated that this approach ignores the benefits to consumers in reducing the number of non-fatal cases of these four diseases. For example, according to the commenter, when FDA evaluated the benefits of its proposed rule on trans fatty acids in foods, the Agency estimated that only one-third of heart attack cases due to coronary heart disease are fatal. For non-fatal cases, FDA estimated the discounted value of the reduction in functional disability and pain and suffering of the patient and the reduction in medical costs at $282,000 per case (or 33.5 percent of the FDA's estimated value of $840,000 per fatal case). According to the commenter, as there are two non-fatal cases of coronary heart disease for every fatal case, FSIS should increase its benefits from the proposed rule by 67 percent. At a seven percent discount rate, this would increase the benefits over 20 years from a reduction in coronary heart disease from FSIS's current estimate of $752 million to $1.256 billion.

The commenter also stated that similar adjustments could be made to account for the reductions in the non-fatal cases of three types of cancer that FSIS considered. About 42 percent of colorectal cancer cases are fatal, about 16 percent of prostate cancer cases are fatal, and about 21 percent of breast cancer cases are fatal. The commenter believed that one could assume that the ratio of the benefits of reducing these non-fatal cases to the benefits of reducing the fatal ones is the same for these three types of cancer as FDA used for coronary heart disease, *i.e.,* 33.5 percent. Using a seven percent discount rate, the commenter estimated that including the reduction in non-fatal cases would increase the benefits over 20 years from a reduction in these three types of cancer from FSIS's current estimate of $167 million to $316 million.

In sum, including the impact of the proposed rule on non-fatal cases of the four diseases FSIS considered increases the total benefits (using a seven percent discount rate over 20 years) from $918 million to $1.572 billion.

When the commenter looked at the impact of the rule as it related to total fat, saturated fat, and cholesterol, the commenter thought that the proposal might help lead to a reduction in weight, which, in turn, could lead to a reduction in both mortality and morbidity from various diseases. According to the commenter, recent studies placed the cost of obesity in the United States at $39 billion in direct medical costs and $48 billion in indirect loss of output because of both morbidity and mortality. Reducing these $87 billion in annual costs by even 0.15 percent through the provisions of this rule would mean additional annual benefits of $13.05 million, which (at a 7 percent discount rate) means additional benefits over 20 years of about $138 million.

In summary, the benefits of the proposed rule over 20 years (discounted at 7 percent)—taking account of morbidity and obesity—could well be $1.71 billion rather than the $918 million estimated in the proposed rule based on FSIS's examining only mortality.

Conversely, a meat industry organization cautioned FSIS against making the mortality assumptions included in the proposed rule's benefits analysis. This commenter stated that FSIS's assumptions were based on only one part of meat's nutrient content. The commenter stated that, while diets high in saturated fat and cholesterol have been associated with risk of chronic disease, meat has never been shown to cause such diseases.

A farmer/rancher believed that the new nutrition labeling requirements could potentially encourage consumers to eat more meat, which would increase her profits.

Response: In response to the comment concerning non-fatal cases of heart disease and cancer, FSIS has reviewed all of the information provided by this commenter and believes that the information provided on coronary heart disease is potentially useful to the FSIS analysis. The information on the relationship between fatal cases and non-fatal cases of coronary heart disease is reliable in that FDA looked at the relevant literature and medical statistics to determine the annual number of heart attack cases of coronary heart disease that occur and the percent of those (occurring each year) that are fatal. This allows for a total, in a given year, of the number of heart attack cases that are not fatal, based just on new heart attack cases. FSIS agrees that a reduction in non-fatal cases of chronic heart disease would result in a significant benefit to society. The methods for estimating both the number of non-fatal cases avoided annually, and the value of non-fatal cases avoided annually are unsettled and further research is needed to improve the reliability of this information.

The information on colorectal, prostate, and breast cancer is not as reliable as that on non-fatal cases of coronary heart disease. Specifically, the information reported by the American Cancer Society represents the annual number of *new* cases, but the annual number of deaths includes deaths from both old cases and new cases of disease. In other words, the annual number of deaths also represents deaths from cases that were reported as new cases in previous years. Therefore, if FSIS were to adopt the information suggested by this commenter, then the denominator used to calculate the percent of fatal cases to all cases would be too small and the percent of fatal cases would be too high. Consequently, the benefits estimates associated with the reduction of non-fatal cases would be greater than the actual value of benefits. It should be noted however, that to ignore the

benefits associated with the reduction of non-fatal cases is also incorrect because, in fact, some benefits exist even though methods are not available to provide reliable estimates. At this time, it is not possible to provide a quantitative estimate of the benefits associated with reducing the non-fatal cases of colorectal, prostate, breast cancer, and coronary heart diseases.

Although the consumer organization recommended that FSIS revise the benefits estimate to include specific benefits associated with weight loss, FSIS did not account for these benefits in the final analysis. FSIS does not have the data necessary to estimate these benefits, and the commenter did not provide the data.

With regard to the industry comment that cautioned against making the benefits assumptions included in the preliminary benefits analysis, the supplemental PRIA benefits analysis is consistent with the preliminary benefits analysis. Therefore, the supplemental PRIA benefits analysis estimates the value of potential changes from intake of fat, saturated fat, and cholesterol that could occur as consumers respond to newly available nutrition information. The supplemental PRIA analysis uses changes in serum cholesterol to estimate health outcomes, which are reductions in the number of cases and mortality from three cancers and coronary heart disease. FSIS used survey data and a model developed by Zarkin, *et al.* to conduct the benefit analysis. The industry commenter did not provide data that would allow FSIS to conduct an alternative benefit analysis.

With regard to the comment that new nutrition labeling requirements could encourage consumers to eat more meat, FSIS does not have data that indicate that consumers will consume more meat as a consequence of new nutrition labeling requirements. Therefore, the supplemental PRIA benefits analysis does not include increased profits to producers.

Comment: One individual stated that there are benefits to individuals in keeping track of their nutritional intake. This commenter believed that he would find it valuable to know the levels of the different nutrients in meat and poultry products.

Response: FSIS concurs that there are benefits to keeping track of an individual's nutritional intake. The level of benefits associated with nutrition labeling depends on the extent to which consumers change their food consumption in favor of products that are more nutritious. To accomplish this, a consumer needs to keep track of his or her nutritional intake.

Comment: One individual stated that nutrition labeling on raw meat and poultry products could potentially lead to some decreases in the sale of red meat. The commenter also stated that poultry and fish will become more popular. The commenter did not anticipate a big overall change in sales.

An animal protection organization also stated that the net effect of the rule may be a decrease in the overall consumption of meat.

Response: Should this rule become final, the impact of the rule will depend upon the extent to which consumers change their food consumption in favor of products that they believe are more consistent with a healthy diet. Therefore, it is possible, as the commenters stated, that nutrition labeling on raw meat and poultry products could lead to some decreases in the sale or consumption of red meat as well as some increases in the sale of poultry and fish. FSIS has no information that would allow the Agency to measure such impact. Therefore, the supplemental PRIA does not reflect any anticipated changes in the volume of meat and poultry products consumed annually.

Comment: A consumer organization stated that there are significant differences between African Americans and Caucasions in the incidence of the four diseases that the FSIS examined in determining the benefits of the proposed rule. According to this commenter, African Americans are 50 percent more likely than Caucasians to die of heart disease, 43 percent more likely to die of colorectal cancer, 153 percent more likely to die of prostate cancer, and 38 percent more likely to die of breast cancer. African Americans are also 140 percent more likely than Caucasians to die of diabetes, a disease linked to obesity.

Response: The benefits analysis that was prepared for this rulemaking does not estimate benefits attributable to specific groups (*e.g.*, Caucasians or different minority groups). However, the benefits analysis does measure the impact to all affected parties. Therefore, no group of individuals has been excluded. Assuming that the information provided by this commenter is correct, then the rule may have a greater positive impact on minorities than on Caucasians.

Other Comments

Comments: Two industry organizations suggested that other nutrients, *e.g.*, zinc, and B-vitamins, should be required nutrients in nutrition labeling of meat and poultry products. One producer suggested that USDA provide information on omega 3 fatty acids and Conjugated Linoleic Acid (CLA) in the nutrient data base. One commenter suggested the addition of a warning label on meat products stating, ''Meat consumption has been linked in research to a higher risk for heart disease, cancer, hypertension, diabetes, and other serious diseases.''

Response: These comments are beyond the scope of the regulation.

Comment: One industry commenter suggested that what was needed most was more consumer education on understanding and interpreting nutrition facts panels.

Response: FSIS's requirements for nutrition facts panels are consistent with FDA's requirements for nutrition facts panels. FSIS has no information indicating that consumers are confused regarding the information displayed on nutrition facts panels. However, if FSIS receives information indicating that consumers need more education concerning the information on nutrition facts panels, the Agency will consider developing consumer education materials to aid consumers in understanding the nutrition facts panels.

Comment: One commenter suggested that a uniform compliance date should be provided for meat and poultry labeling requirements.

Response: FSIS has published a final rule that establishes January 1, 2012, as the uniform compliance date for new food labeling regulations that are issued between January 1, 2009, and December 31, 2010 (73 FR 75564). FSIS issued these regulations to enhance the industry's ability to make orderly adjustments to new labeling requirements without unduly exposing consumers to outdated labels and to minimize the economic impact of labeling changes. Should this rule become final, the January 1, 2012, effective date will apply to the nutrition labeling requirements for ground or chopped products because nutrition labels will be required on ground or chopped products, unless an exemption applies. Should it become final, this rule will allow nutrition information for the major cuts of single-ingredient, raw meat and poultry products at their point-of-purchase, not on the product. Therefore, FSIS intends to make the labeling requirements for the major cuts effective one year from the date of publication of the final rule.

Comment: One commenter stated that it had heard that the data in the USDA National Nutrient Database for Standard Reference are not current, and that USDA is undertaking nutrient analyses of additional fat/lean combinations (*e.g.,*

93/7; 90/10; 85/15) of ground beef. This commenter recommended that USDA forestall promulgation or implementation of these nutrition labeling regulations until all of the necessary information is available. Should FSIS finalize the rule, the commenter recommended that FSIS adopt an 18-month implementation period for the regulations.

Response: As noted above, the USDA National Nutrient Database for Standard Reference includes nutrient values for ground beef product containing 5%, 10%, 15%, 20%, and 25% fat. In addition, ARS has included a calculator on the Internet that will calculate the nutrient values of a particular ground beef product based on the fat or lean value entered.

Should it become final, the effective date for the nutrition labeling requirements for ground or chopped products will be January 1, 2012. Therefore, the affected industry will likely have more than 18 months prior to FSIS's implementation of the rule for ground or chopped products.

Section II. Executive Order 12866—Supplemental Proposed Rule Regulatory Impact Analysis (PRIA)

This action has been reviewed for compliance with Executive Order 12866. As this action is determined ''economically significant'' for purposes of Executive Order 12866, the Office of Management and Budget (OMB) has reviewed it.

This supplemental PRIA differs from the PRIA that was published for the proposed rule. The Food Safety and Inspection Service (FSIS), after reviewing public comments, has concluded that further analysis of the costs and benefits of the rule was required. RTI, International performed an in-depth analysis responding to those comments (RTI, International, 2003) that formed the basis for the revisions to the cost analysis. FSIS incorporated the RTI findings with minor changes into this final analysis. FSIS, among other revisions, has also added a discussion comparing the costs of regulatory alternatives, revised the analysis of benefits, and added a new section examining the cost effectiveness of the rule.

This economic analysis uses the most current data available to the Agency. It relies on the U.S. economic census data from 2002, released in a report dated November 2005. Even though the data collection for the ''U.S. Bureau of the Census—2007 Economic Census'' has been completed, because the detailed reporting on the retail firms and establishments that would likely be affected by the final rule is not scheduled to be available to the Agency until about October 2010, FSIS was unable to use that data. Thus, Tables 3, 4, and 5 (below), which rely on the 2002 census data, have the most current information on these retail firms and establishments available. Further, the Agency used data from the FSIS Performance Based Inspection System (PBIS), April 2006, to estimate the number of Federally- and State-inspected meat and poultry slaughter and processing establishments that would likely be affected by the final rule. These are the most representative data available to the Agency on the time period around the 2002 economic census data. In addition, the Agency used 2005 costs because they are the most representative data available to the Agency, for the time period reflected in the 2002 economic census data.

The Agency requested that the Interagency Economic Peer Review Group coordinate a peer review of the final regulatory impact analysis. The peer reviews conducted by two economists from Federal agencies and the FSIS responses to their comments are available in the FSIS docket room and on the FSIS Web page with the supplemental proposed rule.

FSIS is proposing to amend the Federal meat and poultry products inspection regulations to require nutrition labeling of the major cuts of single-ingredient, raw meat and poultry products, unless an exemption applies. Should this rule become effective, the guidelines for voluntary nutrition labeling will become mandatory for these products.

FSIS is also proposing to amend its regulations to require on-package nutrition labels for ground or chopped meat and poultry products. The Agency has determined that single-ingredient, raw ground or chopped meat and poultry products are different from other single-ingredient, raw meat and poultry products in several important respects, and that these products are similar to products in the current mandatory program that are required to bear nutrition labels. Thus, under this rule, the nutrition labeling requirements for all ground or chopped meat and poultry products will be consistent with the nutrition labeling requirements for multi-ingredient and heat processed products.

The supplementary proposed rule provides for a number of exemptions, including a small business exemption. Should the rule become final, small businesses will be exempt from the requirement for nutrition labeling of single-ingredient, raw ground or chopped products. Small businesses are those with 500 or fewer employees, are owned by companies with 500 or fewer employees, and produce 100,000 pounds or less annually of each ground product affected by the rule.[1]

A. Need for the Rule

FSIS believes that less than the optimal amount of nutrition information is being provided because consumers cannot independently determine the nutritional qualities of the meat and poultry products affected by the rule, thus leading to insufficient incentives for processors and retailers to reveal the nutrient content of these products. To the extent that consumers purchase these products to achieve a nutritional objective, information about the nutritional characteristics of these products has value. Some consumers may purchase or otherwise obtain such information at a cost. However, such information may be costly to obtain for most consumers, and such information may change in value with the development of new products with different nutritional characteristics.

The association between consumption of fat, saturated fat, and cholesterol with three types of cancer and coronary heart disease is discussed in the proposed rule (66 FR 4969, January 18, 2001) and the Supplemental PRIA Benefits Analysis of this section. In 2003, there were about 39,800 deaths in the United States from breast cancer, 29,800 deaths from prostate cancer, and 57,100 deaths from colorectal cancer. There were about 515,200 deaths from coronary heart disease in 2000. Consequently, a decline in the percentage of calories from fat, saturated fat, and cholesterol can lead to a potentially significant number of deaths averted.

A substantial amount of theoretical and applied research has been conducted on the economics of consumer information since first discussed by Stigler, and subsequently by Lancaster and Rosen. Economic theory now treats information on the characteristics of a good along with information on the price of the product as major determinants of consumer choice.

A basis for required labeling exists when the market does not supply enough information to allow consumers to make consumption choices that reflect their individual preferences. Under conditions of asymmetric information, social costs and benefits

[1] It is possible that some very small establishments could potentially be affected by the requirements if they are owned by companies with more than 500 employees and they produce more than 100,000 pounds of any ground product.

may suggest a different labeling outcome than the one resulting from a private firm's labeling decision (Golan, *et al.*). Asymmetric information may particularly be a problem in markets for foods with negative credence attributes [2] as is discussed below regarding products subject to the rule.

In their examination of food consumption patterns before and after the general availability of information about nutritional characteristics, diet-disease connections, and health claims, a number of authors have confirmed the role of nutrition information in enhancing the ability of consumers to make healthier food choices (Kim *et al.,* Neuhouser *et al.,* Tiesl, *et al.* (1997, 2001), Moorman, and Ippolito and Mathios (1990b, 1991, 1995, 1998). The results of these studies are discussed in the Benefits Analysis.

Ground or chopped meat and poultry products are formulated by processors and the nutritional characteristics of these products may vary.[3] In addition, without nutrition information for the major cuts, consumers cannot assess precise levels of fat and cannot know the levels of specific nutrients in these products.[4] Major cuts are generally considered by consumers to be largely undifferentiated products in terms of nutrient content. If one supplier of major cuts provides the nutrient information, and such information is the same regardless of supplier, there is no incentive for other suppliers to incur the cost of providing the information. The extent that such information conveys a negative credence attribute would further limit its availability.

As is explained above, FSIS believes that consumers have reasonable expectations as to the nutrient content of the major cuts. Competitive pressures among processors could over time increase the supply and accuracy of such information (Ippolito and Mathios, 1991). However, the comparison between foods necessary to construct a healthy diet is made difficult if precise information about nutrient content is not provided, significantly different formats are used to provide nutrition information, or the information is difficult to interpret. Thus, the point-of-purchase (POP) nutrition information requirement and enforcement of accuracy will facilitate consumer efforts to construct a healthy diet and facilitate consumer understanding of the information provided.

There is not uniform agreement that nutrition labeling is always an effective policy measure, even if government intervention were warranted on the basis of informational needs and social welfare. Variyam, Blaylock, and Smallwood, 1995 and 1997, found that labels are not an effective means for educating consumers and changing consumption behavior. However, these papers emphasize format and context of the information as important factors affecting the influence of the information on the audience. For example, consumers are more likely to read and understand labels that are clear and concise (Hadden; Magat and Viscusi; Noah). Some of the studies cited above (Tiesl and Levy, 1997, and Ippolito and Mathios, 1995) have found that the effectiveness of nutrition labels are augmented within the context of broader nutrition education programs about diet-health linkages.

Golan, *et al.*, summarize research showing when nutrition labeling is the most appropriate policy tool. Conditions when labeling may be appropriate include:

- Consumer preferences differ. Labeling may be preferable if consumer preferences differ widely with respect to product characteristics, in this case total fat, cholesterol, saturated fat, calcium, and iron for example. As is the case for high sodium foods, consumers show significantly different attitudes to fat content.
- Information is clear and concise. To be effective, the information on the label is clear, concise, and informative. FSIS believes that this criterion will be achieved for both nutrition labels and POP information.

FSIS concludes that these conditions exist for the products subject to the rule or would be accomplished by the rule. FSIS also concludes that nutrition labels and POP information are superior to other tools such as food bans, taxes on fat content, and consumer education programs.

Ippolito and Mathios (1990a) argued that competition among food suppliers and consumer skepticism about suppliers' claims for their foods often leads to well-informed consumers. If, for example, consumers were concerned about dietary intake of sodium, a supplier with a product low in sodium would advertise that attribute. If consumers were also concerned about fat, a supplier with a low-sodium and low-fat product would advertise both attributes. Consumers would know that the low-sodium product that does not make a low-fat claim is likely a higher-fat product. And any product that is silent on both attributes is higher in sodium and fat.

But Ippolito and Mathios also argued there could be conditions under which unfolding of information fails to occur and consumers are not informed about important product attributes. Unfolding might not occur when similar products share a negative attribute, like having a high fat content when consumers are concerned about the fat content of foods. If all competing foods share a high fat content, all suppliers have products embodying a negative attribute, and no supplier would have an incentive to advertise fat content. In that case, mandatory nutrition labels might provide consumers with information they want and did not have.

From a statutory perspective, the lack of nutrition information on the labeling of the major cuts and on ground or chopped products is misleading because material facts or attributes about these products are not disclosed to the public. The FMIA and PPIA provide that product is misbranded if its labeling is false or misleading in any particular way (21 U.S.C. §§ 601(n)(1) and 453(h)(1)). Therefore, without nutrition information for the major cuts and for ground or chopped products, FSIS has concluded that these products would be misbranded under section 1(n) of the FMIA or section 4(h) of the PPIA (66 FR 4974, January 18, 2001).

FSIS believes that the nutrition labeling requirements, when implemented, will provide consumers with valuable information, leading to improved dietary decisions. By increasing consumer awareness of the levels of total fat, saturated fat, and cholesterol in meat and poultry products affected by the rule, nutrition labeling may serve as a further incentive to food retailers and official establishments to provide products with reduced levels of these nutrients. FSIS has concluded that further action is necessary in order to provide consumers with adequate nutrition information.

[2] Credence attributes are characteristics of the quality of a product that the consumer cannot determine even after consumption (nutritional value, medical expertise). Credence characteristics will always require the consumer to acquire information, such as nutritional information, from the seller or third parties, whose credibility will vary.

[3] Single-ingredient, raw ground or chopped meat and poultry products is one of the two major product categories addressed in the rule. As the definition of this product does not change in the analysis, it will be referred to as ''ground or chopped products''.

[4] Major and nonmajor cuts of single-ingredient, raw meat and poultry products is one of the two major product categories addressed in the rule. The category of products will be referred to as ''major and nonmajor cuts''. In the case where only major cuts of single-ingredient, raw meat and products are considered, they will be referred to as ''major cuts''. Nonmajor cuts of single-ingredient, raw meat and poultry products will be referred to as ''nonmajor cuts''.

B. Baseline

The rule would affect Federal establishments and may affect State establishments [5] that produce ground or chopped meat and poultry products. The rule would also affect retail food establishments such as supermarkets, grocery stores, meat markets, warehouse clubs, and superstores. To be conservative, FSIS has included State establishments in this analysis. The Agency used its Performance Based Inspection System (PBIS) database of April 2006 to determine the number of active Federally-inspected establishments producing ground or chopped products affected by the rule (Table 1).

TABLE 1—SIZE DISTRIBUTION OF FEDERAL ESTABLISHMENTS PRODUCING GROUND OR CHOPPED PRODUCTS

Size	Number
Very Small (9 or fewer employees or less than $2.5 million in sales annually)	1,433
Small (10 to 499 employees)	858
Large (500 or more employees)	109
Total	2,400

Source: FSIS Performance Based Inspection System (PBIS), April 2006.

For purposes of this analysis, very small establishments, defined as those with 9 or fewer employees or less than $2.5 million in annual sales are exempt from the requirement for nutrition labeling of single-ingredient, raw ground or chopped products because they have 500 or fewer employees, are owned by companies with 500 or fewer employees, and FSIS assumes they produce 100,000 pounds or less annually of each ground product.[6] Some small establishments may also be exempt from the regulation for the same reasons that some very small establishments are exempt.[7]

Nutrition labels are designed for company-wide use. FSIS estimated the number of affected companies by dividing the number of small and large Federal establishments in Table 1 by three. Based on research, multi-establishment firms own an average of three establishments (Muth, 2003, RTI, 2003). That is, 858 small establishments + 109 large establishments /3 = 322 small and large firms. Some of these Federal establishments may be independent and may not be part of a multi-establishment firm. Similarly, some very small establishments may be part of a multi-establishment firm. Therefore, this is an area of uncertainty in the analysis. However, FSIS believes its assumptions are reasonable for purposes of estimating costs.

In addition, the Agency used the PBIS to estimate the number of active State establishments producing single-ingredient, raw ground or chopped meat and poultry products that would be affected by the rule (Table 2). The information in PBIS on State establishments may not be complete. Thus, the Agency may be underestimating the number of State establishments, or the total number of these establishments that would be affected by the rule.

TABLE 2—SIZE DISTRIBUTION OF STATE ESTABLISHMENTS PRODUCING GROUND OR CHOPPED PRODUCTS

Size	Number of establishments
Very Small (9 or fewer employees or less than $2.5 million in sales annually)	632
Small (10 to 499 employees)	41
Large (500 or more employees)	0
Total	673

Source: FSIS Performance Based Inspection System (PBIS), April 2006.

Most, if not all, of these State establishments may be independent and may not be part of a multi-establishment firm. Very small State establishments are exempt from the requirement for nutrition labeling of ground or chopped products because they have 500 or fewer employees, and the agency has assumed that they are owned by companies with fewer than 500 employees and produce 100,000 pounds or less annually of each ground product. Some small State establishments may also be exempt from the regulation for the same reasons that some very small Federal establishments are exempt. Nutrition labels are designed for company-wide use. Thus, for purposes of the analysis the number of small State establishments and firms are the same.

The total estimated number of meat and poultry processing firms is 363 firms (322 firms with establishments + 41 firms with State establishments) that would be producing ground or chopped meat and poultry products that would be affected by the rule.

Based on the U.S. Economic Census for 2002, there are 47,688 retail firms and 74,910 retail establishments that would be affected by the POP requirements for the major cuts of meat and poultry (Table 3). Despite FSIS encouragement of retailers' use of (POP) materials for the major cuts, the October 1999 voluntary nutrition labeling survey

[5] Unless stated otherwise, when discussing meat and poultry processing establishments, Federally-inspected establishments will be referred to as ''establishments''. State-inspected establishments will be referred to as ''State inspected establishments''.

[6] It is possible that some very small establishments could potentially be affected by the requirements if they are owned by companies with more than 500 employees and they produce more than 100,000 pounds of any ground product. However, FSIS has concluded that this is a reasonable criterion for defining very small establishments that would be exempt from certain provisions of the rule. FSIS has not received public comment objecting to the use of this criterion and does not believe that establishments would alter their operations to meet this criterion.

[7] The PBIS does not include data on the size of the owning company or on processed food volumes. Therefore, it is not possible to determine whether some of these establishments qualify for the small business exemption.

(USDA, 1999) found a lower rate (54.7 percent of retail stores) of participation than the December 1996 survey (USDA, 1996) found (57.7 percent of retail stores). The effect of existing compliance reduces the cost impacts of the rule are shown in Appendices C and D and are discussed below.[8]

TABLE 3—NUMBER OF RETAIL FIRMS AND ESTABLISHMENTS AFFECTED BY POP NUTRITION INFORMATION REQUIREMENTS FOR MAJOR CUTS OF MEAT AND POULTRY

NAICS code	NAICS description	Firms	Establishments
445110	Supermarket and other grocery (except convenience stores)	42,318	66,150
445210	Meat markets	5,354	5,848
452910	Warehouse clubs and superstores	16	2,912
Total		47,688	74,910

Note: NAICS is North American Industry Classification. A ''firm'' refers to the parent company and an ''establishment'' refers to the retail facility.
Source: U.S. Department of Commerce, U.S. Bureau of the Census—2002 Economic Census, November 2005. ''Establishment and Firm Size: Retail Trade.'' EC02–44SS–SZ. Washington, DC: U.S. Department of Commerce.

Table 4 shows the number of large retail firms and establishments affected by nutrition labeling requirements for ground or chopped products. About 23,479 retail establishments are owned by about 266 companies that have 500 or more employees. Table 5 shows the estimated number of small retail firms and establishments that would be affected by nutrition labeling requirements for ground or chopped products, if there were no waiver related to the use of a ''percentage-lean/percentage-fat'' statement. About 51,431 retail establishments are owned by the 47,422 firms that have less than 500 employees. This policy is discussed below.

TABLE 4—ESTIMATED NUMBER OF LARGE RETAIL FIRMS AND ESTABLISHMENTS AFFECTED BY NUTRITION LABELING REQUIREMENTS FOR GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS

NAICS code	NAICS description	Firms	Establishments
445110	Supermarket and other grocery store (except convenience stores)	253	20,434
445210	Meat markets	2	142
452910	Warehouse clubs and superstores	11	2,903
Total		266	23,479

Note: NAIC is North American Industry Classification. A ''firm'' refers to the parent company and an ''establishment'' refers to the retail facility.
Source: U.S. Department of Commerce, U.S. Bureau of the Census—2002 Economic Census, November 2005. ''Establishment and Firm Size: Retail Trade.'' EC02–44SS–SZ. Washington, DC: U.S. Department of Commerce.

TABLE 5—ESTIMATED NUMBER OF SMALL RETAIL FIRMS AND ESTABLISHMENTS AFFECTED BY NUTRITION LABELING REQUIREMENTS FOR GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS, WHEN THE ''PERCENT-LEAN/PERCENT-FAT'' LABEL IS NO LONGER WAIVED FOR THESE PRODUCTS

NAICS code	NAICS description	Firms	Establishments
445110	Supermarket and other grocery store (except convenience stores)	42,065	45,716
445210	Meat markets	5,352	5,706
452910	Warehouse clubs and superstores	5	9
Total		47,422	51,431

Note: NAIC is North American Industry Classification. A ''firm'' refers to the parent company and an ''establishment'' refers to the retail facility.
Source: U.S. Department of Commerce, U.S. Bureau of the Census—2002 Economic Census, November 2005. ''Establishment and Firm Size: Retail Trade.'' EC02–44SS–SZ. Washington, DC: U.S. Department of Commerce.

Should it become final, the rule would affect an estimated 21.6 billion pounds of meat and poultry products. Of this amount, 16.7 billion pounds are major cuts of single-ingredient, raw products and 4.9 billion pounds are ground or chopped meat and poultry products. The amount of ground or chopped product subject to the provisions by the rule is reduced from an estimated 6.2 billion pounds as a result of exemptions to small businesses. There are approximately 2.9 billion pounds of nonmajor cuts. These products are not affected by the final rule; however they are affected by the requirements of Alternatives 2 and 5 discussed in the following section. The source and derivation of these estimates are provided in Appendix A, Tables 1–4 and discussed in the Cost Effectiveness Analysis.

These estimates, however, do not take into account the level of voluntary compliance with the nutrition labeling requirements for ground or chopped products that currently exists. Consequently, the estimated amounts of ground or chopped products and major cuts that would be impacted by the final rule are overstated. However, in the analysis that follows we take into account the 68 percent compliance rate

[8] The appendices supporting the economic analysis are available from the FSIS docket room and at *http://www.fsis.usda.gov/regulations_&_policies/2009_Proposed_Rules_Index/index.asp*.

(NCBA, 2004) of voluntary nutrition labeling of ground or chopped products and 54.8 percent level of voluntary compliance (USDA, 1999) of stores that provide nutrition labeling for major cuts.

FSIS used data from USDA's Continuing Survey of Food Intake by Individuals (CSFII), and the associated Diet and Health Knowledge Survey (DHKS) to establish a baseline for fat, saturated fat, and cholesterol intake. The CSFII collects data on food intakes by individuals. USDA conducted three separate one-year surveys for 1994–96 (USDA, 1994–1996). These surveys recorded two nonconsecutive days of food consumption and collected information on what and how much individuals ate, and where the food was obtained. This information was used to develop estimates of nutrient intake for each individual respondent. The DHKS gathered data on consumers' knowledge of issues related to diet and health, and contained several questions relating to the use of nutrition information labels and nutrition information for food products. Linking information from the two surveys allowed FSIS to correlate use of nutrition information from the DHKS with nutrient intake data from the CSFII. The Agency focused here on two key questions pertaining to nutrition information use on all food products and on meat and poultry in particular: *Q: When you buy foods, do you use the nutrition panel that tells the amount of calories, protein, fat, and such [e.g., sodium, total carbohydrate] in the serving of a food: Often (always), sometimes, rarely, or never? (Question 16–c, DKHS) Q: When you buy raw meat, poultry, or fish, do you look for nutrition information: Often (always), sometimes, rarely, or never? (Question 17–I, DHKS*). Using data from the CSFII and the DHKS, FSIS estimated rates of nutrition information usage, based on these two questions. The results are presented in Benefits Analysis (Table 15) where they are used to establish a baseline for intake of fat, saturated fat, and cholesterol. Additional information is then used to estimate the impacts of label usage on dietary intakes of these nutrients, and the resulting human health effects.

C. Regulatory Alternatives

FSIS considered several regulatory alternatives:

- *Alternative 1:* Continuing with the existing voluntary program;
- *Alternative 2:* Making the voluntary program mandatory;
- *Alternative 3 (the supplemental proposed rule):* Requiring nutrition information on labels of all ground or chopped products and making the voluntary program mandatory for the major cuts;
- *Alternative 4:* Requiring nutrition information on labels of the major cuts and on all ground or chopped products; and
- *Alternative 5:* Requiring nutrition information on labels of major and nonmajor cuts and all ground or chopped products.

The provisions for the regulatory alternatives are summarized in the following table.

TABLE 6—NUTRITION LABELING REQUIREMENTS UNDER REGULATORY ALTERNATIVES

	Type of product		
Regulatory alternative	Ground or chopped products	Major cuts of single ingredient, raw products	Nonmajor cuts of single-ingredient, raw products
Alternative 1; (Status quo/current requirements).	On-package nutrition labeling is not required for ground or chopped products that are raw, single-ingredient.	Voluntary program: nutrition information can be on package or at point of purchase.	Voluntary program: nutrition information for these products is not required. However, if nutrition information is voluntarily provided for these products, it must be consistent with the nutrition information required for the major cuts of single-ingredient, raw products.
Alternative 2	Mandatory nutrition labeling requirements. Nutrition information must be provided on package or at the point of purchase. The analysis assumes that a reference manual is provided at the point of purchase which contains the required nutrition information.	Mandatory nutrition labeling requirements. Nutrition information is provided on package or at the point of purchase. The analysis assumes that a reference manual is provided at the point of purchase which contains the required nutrition information.	Mandatory nutrition labeling requirements. Nutrition information is provided on package or at the point of purchase. The analysis assumes that a reference manual is provided at the point of purchase which contains the required nutrition information.
Alternative 3 (Supplemental Proposed Rule provisions).	On-package nutrition labeling is mandatory for all ground or chopped products, including those that are single ingredient, raw products.	Mandatory nutrition labeling requirements. Nutrition information must be provided on package or at the point of purchase. The analysis assumes that placards conveying the required nutrition information will be located at the point of purchase.	Nutrition information for these products is not required. However, if nutrition information is voluntarily provided for these products, it must be consistent with the nutrition information required for the major cuts of single-ingredient, raw products.
Alternative 4	Same as Alternative 3	On-package nutrition labeling is mandatory for these products.	Nutrition information for these products is not required. Nutrition information can be provided on the label or by POP.
Alternative 5	Same as Alternative 3	Same as Alternative 4	On-package nutrition labeling is mandatory for these products.

Uncertainty analyses are conducted to estimate cost distributions for each of the alternatives and the supplemental proposed rule. The stochastic cost model uses @RISK (Version 4.5, Palisades Corp.) to examine the effects of uncertainty. The model, statistical properties, assumptions, documentation, and results are presented in the tables of Appendix B and Appendix D, Tables 2 and 3.[9]

Alternative 1: Continuing With the Voluntary Program

FSIS considered continuing with the existing voluntary program and attempting to increase participation by providing additional assistance to the non-participants. FSIS considered providing nutrition information or POP materials directly to retail stores to encourage their participation in the voluntary nutrition labeling program and providing POP material files on the FSIS Web site that retailers could print and place in their stores.

Under this alternative, retail establishments would continue to provide, on a voluntary basis, nutrition labeling for all single-ingredient, raw meat and poultry products, including major cuts identified in §§ 317.344 and 381.444 (including ground beef, ground pork) and cuts that are not identified as major cuts (including ground or chopped products not covered in §§ 317.344 and 381.444). This information could be provided at the point of purchase or on the label of the product.

FSIS's efforts to provide nutrition information or POP materials to retail stores to encourage their participation in the voluntary nutrition labeling program and to provide POP material files on the FSIS Web site could lead to additional participation in the voluntary nutrition labeling program. However, FSIS did not choose this alternative because, even though its cost is relatively low, the benefits of the alternative are also relatively low. This option would not ensure that nutrition information is provided for the major cuts of single-ingredient, raw meat and poultry products. In addition, FSIS did not choose this alternative because the Agency has determined that ground or chopped products that do not bear nutrition information would be misbranded under section 1(n)(1) of the FMIA and section 4(h)(1) of the PPIA. Therefore, POP materials would not be adequate to provide nutrition information for these products.

Alternative 2: Make the Voluntary Program Mandatory

FSIS considered making the voluntary program mandatory by requiring nutrition information, either on labels or at the point of purchase, for all single-ingredient, raw meat and poultry products, including the major cuts and the nonmajor cuts of single-ingredient, raw meat and poultry products. Under this alternative, FSIS would assume that most retailers would display POP information for these products rather than nutrition labels, because this is a low-cost means of providing nutrition information for multiple products.

FSIS believes the vehicle chosen by retail establishments for displaying nutrition information at the point of purchase for all major and nonmajor cuts of single-ingredient, raw meat and poultry products would be a reference manual, because placards covering all the major and nonmajor cuts would take up product display space and result in visual clutter. In addition, a manual may be easier for consumers to use than numerous placards covering all major and nonmajor cuts, and all the numerous formulations of ground or chopped meat and poultry products. A manual about the size of the *Uniform Retail Meat and Identity Standards* publication could include nutrition information for all the major and nonmajor cuts, including nutrition information for numerous formulations of ground or chopped products. The *Uniform Retail Meat and Identity Standards* publication is approximately 100 pages, with a page size of 8½x11, in a three-ring binder. The publication provides meat identification standards for all cuts. However, the publication does not provide nutrition information or information on poultry cuts. Such information would have to be assembled from other sources for inclusion in the manual.

This publication, including shipping and handling costs, is available for purchase through the National Cattleman's Beef Association for a minimum cost of $97.50; most-likely cost of $100.00; or a maximum cost of $102.50. In the cost analysis of the alternative chosen, FSIS estimated there are about 74,910 retail establishments (Table 3). FSIS assumed that the manual would be replaced annually. FSIS estimated the labor cost of displaying POP information for the major cuts at $21.11 per hour.[10] The time to obtain and make available POP information for the major cuts per store, an average of 0.5 hour, is the same as that used to estimate the cost of Alternative 3, the supplemental proposed rule. Based on these estimates, the annual costs of this alternative is estimated to be $8,281,675.[11] This estimate is comprised of $790,675 for labor costs (74,910 establishments × $21.11/hour × .5 hours) and $7,491,000 for the cost of the reference manual (74,910 × $100.00/establishment). The average present value of this cost is estimated at $87.74 million[12] when discounted at 7 percent over 20 years.[13]

This alternative would be less expensive than the alternative chosen by the Agency. As explained in the preamble to the proposed rule, FSIS is unable to distinguish between the benefits that would accrue from requiring nutrition labels on products versus nutrition information on POP materials (66 FR 4984–4985, January 18, 2001). Research is not available to differentiate the benefits of nutrition information on labels versus nutrition information on displays. This is a significant area of uncertainty in analyzing benefits of the regulatory alternatives.

The benefits of this alternative may be comparable to the benefits of the alternative chosen if POP nutrition information and on-package labels have roughly the same amount of success[14]

[9] The stochastic model structure or framework, equation specification, statistical properties, assumptions, documentation, and results are presented in the tables of Appendix B and in Appendix D, Tables 2 and 3. In most cases, the minimum (low), maximum (high), and most-likely or mid-points values are to be found in the tables of Appendix B. In general, the values used represent information collected by RTI for the FDA Labeling Model, or other studies such as the NCBA surveys. Other values were assumed to be around a point-value that was collected by RTI, NCBA, or other referenced studies. Assumptions are made and tested for their effect on average cost of the alternatives considered. The results are in tables of Appendix B, and in Appendix D, Table 1 that has the summary of additional costs by alternative. In addition, Appendix D, Tables 2 and 3, have the detailed stochastic model framework of the economic analysis, and results of the preferred Alternative 3.

[10] Department of Labor, 2002. This wage represents an appropriate wage for a combination of managerial and regular staff that would be making available POP materials for major cuts and includes wages of $15.62 and fringe benefits of $5.49 per hour.

[11] This average annual cost has a range of variability of $8.03 million at the 5th percentile and 8.53 at the 95th percentile (*see* Appendix B, Table 10 and Appendix D, Table 1).

[12] This average annual cost has a range of variability of $85.10 million at the 5th percentile and $90.83 million at the 95th percentile (*see* Appendix B, Table 10 and Appendix D, Table 1).

[13] All present value calculations in the analysis of both costs and benefits use a 20-year time horizon.

[14] The term ''success'' or ''successful'' is used to aid the discussion in the cost effectiveness analysis where the effectiveness of the regulatory alternatives is discussed under scenarios where the impact (''success'') of POP nutrition information is varied relative to that of on-package nutrition labels in leading to dietary change. The use of the same term to refer to two different types of comparisons is intended to clarify the discussion.

in leading to dietary change.[15] However, because there are numerous formulations of ground or chopped products, it would be difficult for producers or retailers to develop POP materials that would address all the different formulations that exist for these products. Furthermore, it would be difficult for consumers to find the correct information for a specific ground or chopped product on POP materials that include information concerning numerous formulations of these products (66 FR 4977, January 18, 2001). To use POP materials only, without nutrition labels, consumers would have to find the nutrition information for a specific fat and lean formulation among multiple formulations. If a statement of the fat percentage is not included on a package of ground products, consumers would not know which nutrient data concerning ground product on POP materials would apply to that particular ground product. Therefore, because this option may not result in benefits associated with the consumption of ground or chopped products, this option would likely result in lower benefits compared to the option chosen. In addition, FSIS did not choose this alternative because it does not allow for any distinction between major and nonmajor cuts. FSIS has determined that it is not appropriate or necessary to require nutrition information for nonmajor cuts that are not ground or chopped at this time.

Alternative 3 (Supplemental Proposed Rule): Require Nutrition Information on Labels of All Ground or Chopped Products and Make the Voluntary Program Mandatory for the Major Cuts (Other Than Ground Beef, Ground Pork)

Should this rule become final, it will require nutrition information on the labels of all ground or chopped products and requires nutrition information, either on their labels or at their POP, for the major cuts of single-ingredient, raw products, unless such products qualify for an exemption. Under this alternative, retail establishments and processors of meat and poultry products could continue to voluntarily provide nutrition information for nonmajor cuts of single-ingredient, raw meat and poultry products that are not ground or chopped. This approach allows for a distinction between ground or chopped products and other cuts. It also allows for a distinction between major and nonmajor cuts.

Consistent with the regulations, the most recent voluntary nutrition labeling survey (USDA, 1999) only assessed whether retail stores provided nutrition labeling for the major cuts of single-ingredient, raw meat and poultry products. Until some assessment is made of whether adequate information is being provided for the nonmajor cuts of single-ingredient, raw products that are not ground or chopped, FSIS cannot determine whether it would be beneficial to require nutrition information for these products.

The derivations of the costs of Alternative 3 are shown in the section, Supplemental PRIA Cost Analysis. The average total present value of the costs of this alternative is $348.06 million, assuming retailers select the lower cost compliance option (Table 14). The average annualized cost associated with this alternative is $32.85 million. As is shown in the section, Supplemental PRIA Benefits Analysis, the present value of the benefits of this alternative is $2.2 billion if POP nutrition information for the major cuts is as successful as on-package labels in leading to dietary changes. The annualized benefit associated with this alternative is $205.5 million. These estimates are not adjusted to account for current compliance, thus over estimate costs and benefits from saved lives.

Alternative 4: Require Nutrition Information on Labels of the Major Cuts and on All Ground or Chopped Products

FSIS considered requiring nutrition information only on labels of the major cuts and on all other ground or chopped products not covered in §§ 317.344 and 381.444.[16] As in Alternative 3, establishments could voluntarily provide nutrition information, either at the POP or on the label, for the nonmajor cuts that are not ground or chopped. This approach allows for a distinction between major cuts and nonmajor cuts that are not ground or chopped.

FSIS estimates that packages of single-ingredient, raw major cuts, including ground beef and ground pork, represent at a minimum 80 percent, most-likely 85 percent, and at a maximum 90 percent of all packages of single-ingredient, raw meat and poultry products sold through retail stores. Therefore, FSIS estimates the minimum, most-likely, and maximum costs of this alternative would be the same as these percentages of the costs of Alternative 5, which requires nutrition information on the package labels of all major and nonmajor cuts sold through retail stores. FSIS has based these percentages on a previous determination by FSIS that the major cuts are representative of the market (56 FR 60307, November 27, 1991) and are the most popular cuts (56 FR 60320). Comments on the 1991 nutrition labeling proposal generally supported the list of major cuts (58 FR 640, January 6, 1993). Similarly, one comment to the January 18, 2001, proposed rule on nutrition labeling stated that the major cuts represent the greatest share of fresh meat consumption. The cost analysis of Alternative 5 follows this discussion.

FSIS estimates the average present value of the costs of this alternative to be $812.99 million ($956.5 million, the average present value cost of Alternative 5, × .85). The average annualized cost associated with this alternative is estimated at $90.28 million.

The benefits of this alternative would be similar to those of the selected alternative if POP nutrition information and on-package labels are equally successful at leading to dietary change. The pounds of product requiring nutrition labeling are the same for both Alternatives 3 and 4. However, this alternative would be significantly more costly than the alternative chosen, because this alternative would require on-package nutrition labels on a large volume of product that are not required to bear labels under Alternative 3.

These estimates are not adjusted to account for current compliance, thus over estimate costs and benefits from saved lives.

Alternative 5: Require Nutrition Labels on All Single-Ingredient, Raw Meat and Poultry Products and on All Ground or Chopped Products

FSIS considered requiring nutrition information on labels of major cuts and nonmajor cuts of single-ingredient, raw meat and poultry products, and on labels of ground or chopped products, unless an exemption applied.

The supplemental PRIA cost analysis for the alternative chosen calculated the costs of requiring nutrition labels on all ground or chopped products. FSIS calculated the costs of requiring labels on all other major and nonmajor cuts of single-ingredient, raw products that are not ground or chopped. The same method for estimating the labeling cost for all ground and chopped products under the alternative chosen was used to estimate the labeling costs for major

[15] As the success of point-of-purchase information declines relative to on-package nutrition labels, there is a proportional decline in dietary changes and consequently a proportional decline in lives saved associated with that measure, given the differences in that amount of product affected.

[16] Ground or chopped products or not covered in §§ 317.344 and 381.444 will be referred to as ''ground or chopped products'' in the remainder of the final regulatory impact analysis.

and nonmajor cuts of single-ingredient, raw products under Alternative 5.

Table 7 shows the number of Federal establishments producing major or nonmajor cuts that are not ground products. Many of these establishments have a mix of operations that fabricate a variety of cuts derived from multiple species in the same establishment. This is especially prevalent in small and very small sized establishments. Thus, the totals of the columns or the rows in this table do not represent the total number of establishments under Federal inspection due to double counting.

TABLE 7—FEDERAL ESTABLISHMENTS THAT FABRICATE MAJOR OR NONMAJOR CUTS THAT ARE NOT-GROUND PRODUCTS

Product	Size			
	Large	Small	Very small	Unknown
Meat:				
Beef	52	886	1303	28
Pork	56	750	1155	23
Lamb	0	319	575	11
Other meat	3	186	338	4
Poultry:				
Chicken	158	611	698	15
Turkey	38	210	264	5
Other poultry	0	0	2	0

Note: Data is from the Performance Based Inspection System (PBIS) April 2006.

Consistent with the supplemental PRIA cost analysis for the selected alternative, FSIS estimates that very small establishments would be exempt from nutrition labeling requirements because they have 500 or fewer employees, are owned by companies with 500 or fewer employees, and FSIS assumes they produce 100,000 pounds or less annually of each product. Also, FSIS assumes that all ''small'' establishments are owned by large, multi-establishment firms and would not qualify for this exemption. Nutrition labels are designed for company-wide use. FSIS estimated the number of affected companies by dividing the number of small and large establishments in the table above by three, the number of establishments owned on average by multi-establishment firms (Muth, 2003; RTI, 2003). FSIS assumed establishments of unknown size are either large or small, to ensure that the Agency did not underestimate the number of affected establishments.

In addition, there are about 41 State establishments that are small that would likely be affected by this rule. Little information is available to the Agency about the number of firms that represent the 41 State establishments. However, it is likely that the 41 State establishments are owned by 41 firms. There are no State establishments that are large. The analysis assumes that State establishments that are small would be affected. Furthermore, the Agency does not have data for these 41 State establishments on the fabrication of major or nonmajor cuts of single-ingredient, raw products. Therefore, the Agency may be underestimating the number of affected firms that own small or large processing establishments that fabricate major and nonmajor cuts.

Thus, the final estimates of the number of affected firms that own small or large processing establishments that fabricate major and nonmajor cuts that are not ground are: 322 beef firms; 276 pork firms; 110 lamb firms; 64 ''other'' meat firms, including goat processors; 261 chicken firms; and 84 turkey firms.[17]

To estimate the average number of cut products fabricated per firm, FSIS estimated that all firms would fabricate all the major cuts (except the ground major cuts, because FSIS has already accounted for those) and an additional 3 nonmajor cuts. FSIS estimated that beef firms would typically fabricate 12 major products; pork firms, 9; lamb firms, 6; chicken firms, 5; and turkey firms, 5 major products. Therefore, the total number of major and nonmajor products fabricated by beef firms is 15 products; pork firms, 12; lamb firms, 9; chicken firms, 8; and turkey firms, 8. FSIS then assumed processors of ''other'' meat products would fabricate 12 products (similar to the number of beef or pork products). In the table above, the PBIS figures for beef processors include veal processors. For purposes of this analysis, FSIS considered the number of major beef cuts rather than veal cuts, because beef is more widely produced and consumed than veal.

FSIS estimated the average, one-time cost to modify on-package labels for prepackaged meat and poultry product by multiplying the average per label modification cost ($2,274 as shown in the Supplemental PRIA Cost Analysis) by the number of affected firms and by the number of products per firm. Based on this formula and the numbers of firms and products shown above, the estimated average label modification costs are: beef and veal firms, $10.85 million ($33,700/firm); pork firms, $7.44 million ($27,000/firm); lamb firms, $2.22 million ($20,000/firm); other meat firms, 1.73 million ($27,000/firm); chicken firms, $4.69 million ($18,000/firm); and turkey firms, $1.51 million ($18,000/firm). The total, one-time average costs of designing labels would be $28.45 million.

In addition to the one-time average costs of designing labels, companies will also incur costs for providing larger labels with nutrition information. To calculate this cost, FSIS estimated that there are 11.25 billion packages (15 billion[18] retail packages of all raw meat and poultry × 75 percent[19] that are single-ingredient, raw packages) of major and nonmajor cuts sold through retail establishments.

Furthermore, in the supplemental PRIA cost analysis for the alternative

[17] The number of firms affected is derived by summing the number of large establishments, small establishments, and establishments of unknown size for each type of species in Table 7 and dividing by 3, the average number of establishments owned by a firm.

[18] The safe handling rule estimated that there were 15 billion retail packages of raw meat and poultry products (58 FR 58925).

[19] Based on information from the July 2004 National Conference on Weights and Measures held in Pittsburgh, PA, FSIS estimates that 25 percent of retail packages of meat and poultry are products with added solutions. Therefore, FSIS estimates that 25 percent of retail packages of fresh meat and poultry products are multi-ingredient products for which nutrition labeling information is already required, unless an exemption applies. Thus, 75 percent (100 percent minus 25 percent) of retail packages of raw meat and poultry products are single-ingredient products for which nutrition labeling information is now required, unless an exemption applies.

chosen, FSIS estimated that there are 2.267 billion packages of ground or chopped products (*see* Appendix B Table 8). Therefore, FSIS estimates that there are 8.983 billion packages (11.25 billion packages of all meat and poultry minus 2.267 billion packages of ground or chopped products) of major and nonmajor cuts that are not ground or chopped sold through retail establishments.

FSIS estimates that 25 percent of 8.893 billion packages of single-ingredient, raw major and nonmajor cuts that are not ground or chopped are packaged by processing establishments, or 2.246 billion packages (8.893 billion packages × 25 percent). Based on information collected by RTI, a blank label is assumed to have a minimum cost of $0.002; most-likely cost of $0.005; and a maximum cost of $0.008. Multiplying 2.246 billion packages by the annual added average cost of $0.005 per label results in an average cost of approximately $11.23 million (2,246 billion packages × $0.005 per label) annually. Total first-year costs (one-time and annual recurring) to processing establishments would be $39.68 million ($28.45 million for one-time cost + $11.23 million annual recurring cost).

Only retail establishments that have 500 or more employees will be affected by nutrition labeling requirements for major and nonmajor cuts because it is not likely that others would produce 100,000 pounds per single-ingredient, raw product. Table 4 shows that 23,479 retail facilities are owned by companies that have 500 or more employees. The stores are owned by 266 firms.

Retail establishments subject to the requirements of the rule could comply by either incorporating nutrition information on the label printed by store scale printer systems (option 1) or by applying an additional preprinted label with nutrition information (option 2).[20] The supplemental PRIA cost analysis for the Alternative chosen shows that option 1 is the less expensive option. Therefore, FSIS assumes stores would choose this option under Alternative 5 as well. FSIS also assumes that, on average, the estimated total cost to upgrade printer scales to provide store-printed labels is $56.35 million (23,479 retail establishments × $2,400 per establishment). The analysis assumes that scales with the added features for making store-printed labels are replaced every five years. The annual maintenance costs for the upgraded scale printer is estimated to be 6 percent of $2,400 or $144 every year after a scale printer has been purchased equal to $3.38 million (23,479 retail establishments × $144 per establishment). FSIS is including these costs here, in addition to the costs for nutrition labeling of ground or chopped products, because FSIS assumes that retail stores would need to have additional scale printers to apply labels to major and nonmajor cuts that are not ground or chopped.

The supplemental PRIA cost analysis shows that for retail stores the average one-time cost estimates for redesigning labels is $0.414 million (Appendix B, Table 3). FSIS is including this cost here and in the ground or chopped products labeling costs to ensure that FSIS does not underestimate the costs of this alternative.

The supplemental PRIA cost analysis estimates that each processor company produces an average of 6.6 unique ground or chopped products (*see* Appendix B, Table 2), that each retail firm and meat market firm offers an average of 4.6 unique ground or chopped products (4.6/6.6 or 69 percent of the number of ground or chopped products produced by processors), and that each warehouse club firm offers an average of 1.33 unique ground or chopped products (1.3/6.6 or 20 percent of the number of ground or chopped products sold by processors, (Appendix B, Table 9).

Excluding ground or chopped products, FSIS estimates that retail and meat market firms package 69 percent of the total number or major and nonmajor cuts produced by establishments. Consequently, these firms would package on average 10.35 beef products, 8.28 pork products, 6.21 lamb products, 5.52 chicken products, 5.52 turkey products; and 8.28 other meat products. Excluding ground or chopped products, FSIS estimates that warehouse club firms package 20 percent of the total number of major and nonmajor cuts by processors. Consequently, these firms would package an average of 3 beef products, 2.4 pork products 1.8 lamb products, 1.6 chicken products, 1.6 turkey products, and 2.4 other meat products. Therefore, FSIS estimates that each retail and meat market firm packages an average of 44.16 unique major and nonmajor cuts. FSIS also estimates that each warehouse club firm packages an average of 12.8 unique major and nonmajor cuts.

Therefore, an average of 11,402 unique major and nonmajor cuts will require nutrition labels applied in retail facilities ((44.16 products × 255 supermarket, grocery store and meat market firms) + (12.8 products × 11 warehouse club and superstore firms)).

Consistent with the cost analysis of the chosen alternative, the average one-time cost to retailers affected by the rule for the nutrition analyses of major and nonmajor cuts[21] is $7.87 million (11,402 unique products × $690 average cost of a nutrition analysis, Appendix B, Table 3).

The use of larger labels is another cost that retail stores may incur. If retail stores package 75 percent of total single-ingredient, major and nonmajor cuts that are not ground or chopped, then an average of 6.737 billion packages (8.983 billion packages × 75 percent) are packaged by retail stores annually. If the added average cost of each label is $0.005 (as assumed in the cost analysis for the alternative chosen), then retailers affected by the rule will incur an added average annual cost of about $33.68 million.

A summary of the frequency of various labeling costs for single-ingredient, raw products for Alternative 5 are shown in Table 8. A summary of the costs for Alternative 5 are shown in Table 9 and in Appendix D.

Alternative 5 is the most expensive alternative that FSIS considered. This alternative would require labels on a larger volume of product than would Alternative 4. As with Alternative 4, this alternative would require labels on a large volume of product not currently required to bear labels.

[20] Options 1 and 2 are described in the Final Rule *Cost Analysis.*

[21] A nutrition analysis is required to create a Nutrition Facts panel. Nutrition information is available from FSIS and other sources for many ground or chopped products, and major and nonmajor cuts of meat and poultry products.

TABLE 8—FREQUENCY OF LABELING COSTS FOR SINGLE-INGREDIENT, RAW MEAT AND POULTRY PRODUCTS, EXCLUDING COST FOR GROUND AND CHOPPED PRODUCTS

Item	Frequency of cost *			
	One-time	Recurring		
	1st year only	Annual	1st year & once/5 years	Other **
	$ Million			
Processing:				
Modify Labels	28.45			
Use larger labels		11.23		
Retail:				
Upgrade printer scales			56.35	
Printer Maintenance				3.38
Redesign larger labels	0.414			
Use larger labels		33.68		
Nutrition analysis	7.87			

* All costs are average costs as derived in Appendix B.
** Costs for printer maintenance occur annually, except for years in which a printer is purchased.

TABLE 9—AVERAGE PRESENT VALUE AND ANNUALIZED COSTS * FOR ALTERNATIVE 5

	Present value 3%	Present value 7%	Annualized 3%	Annualized 7%
	$ Million			
Ground and chopped product:				
Processing	47.70	35.28	3.21	3.33
Retail	381.71	281.70	25.66	26.59
Total ground and chopped	429.41	316.98	28.86	29.92
Raw, single-ingredient cuts:				
Processing	217.33	159.87	14.61	15.09
Retail	652.00	479.62	48.82	45.27
Total raw, single-ingredient cuts	869.33	639.49	58.44	60.36
Total, All Products	1,298.82	956.54	87.20	90.28

* These estimates are not adjusted to account for current compliance, thus over estimate costs.

The benefits of this alternative are comparable to the alternative chosen after taking into account the amount of nonmajor cuts covered by this alternative and on the condition that POP nutrition information is equally as successful as on-package labels in leading to dietary change.

Summary Comparison of Regulatory Alternatives

The Analysis of Alternatives section provides an in-depth comparison of the regulatory alternatives, including a cost-effectiveness analysis. This comparison takes into account the relative success of POP nutrition information compared to on-package nutrition information labels, and the cost of each measure (form in which nutrition information is provided) for the products affected. The discussion of cost-effectiveness centers on Tables 26–29.

D. Costs and Benefit of the Supplemental Proposed Rule

1. Supplemental PRIA Cost Analysis

FSIS analysis of this rule includes many of the same assumptions that were used in the proposed rule. In most cases, FSIS believes that the initial assumptions are still valid. No new data has been presented refining or disputing these original assumptions. However, in other cases FSIS and RTI were able, based upon more current information, to change and improve the original assumptions.

PRIA vs. *supplemental PRIA:* The PRIA estimated the costs of nutrition labels based on the cost analysis conducted for the ''Mandatory Safe Handling Statements on Labeling of Raw Meat and Poultry Products'' proposed rule published November 4, 1993 (58 FR 58922). In the PRIA, FSIS adjusted the costs of the safe handling rule to reflect the costs related to the volume of ground or chopped products produced. For fixed costs associated with nutrition labeling of ground or chopped products, FSIS assumed that 80 percent of the estimated fixed costs were already incurred by retailers and processors, and only 20 percent of the estimated fixed costs would be required for compliance with the proposed rule. Therefore, FSIS estimated the fixed costs for the nutrition labeling of ground or chopped products would total 20 percent of the estimated fixed safe handling labeling costs: $10 million to $20 million for processors and $28.8 million to $43.2 million for retailers (66 FR 4986, January 18, 2001).

The estimates of operating costs to retail establishments in the PRIA are based on the number of packages of ground or chopped products that would be sold through small and large retail stores and the labeling costs per package based on the safe handling labeling costs. FSIS multiplied the estimated

number of ground or chopped products sold through large retail stores by the safe handling label cost for large retail stores to derive an estimate of $6 million in annual operating costs for these stores. Similarly, FSIS multiplied the estimated number of packages of ground or chopped products sold through small retail stores by the safe handling label costs for small retail stores to derive an annual estimate of $4 million in costs for these establishments (66 FR 4988, January 18, 2001). FSIS explained that these operating costs would increase by $2 million to $12 million in current prices. FSIS also estimated the labor costs of small firms applying a separate nutrition label would be $.6 million, based on safe handling label costs (66 FR 4988, January 18, 2001). FSIS assumed processors would incur no additional operating costs associated with nutrition labeling ground or chopped products.

FSIS also estimated one-time paperwork burden costs for nutrition labels on ground or chopped products of $8.8 million. These paperwork burden costs were the estimated costs of label development, recordkeeping, and the costs of submitting label approval applications to FSIS (66 FR 4988, January 18, 2001).

Finally, FSIS estimated that the average time for each retail establishment to obtain POP materials that include nutrition information for the major cuts of single-ingredient, raw meat and poultry products would be 30 minutes. Based on labor costs of $20 per hour, FSIS estimated that total retail costs for obtaining these materials would be $0.7 million. (66 FR 4985–4986, January 18, 2001). The PRIA did not estimate any other costs associated with retailers obtaining or maintaining POP materials.

The revisions in the supplemental PRIA are based on additional information available to FSIS, improved analytical methods, and a more accurate characterization of the impacts of the rule. FSIS revised the supplemental PRIA in response to concerns expressed during the Interagency review of the PRIA about data quality and in response to final guidelines issued by the Office of Management and Budget (OMB, 2002) to Federal Agencies after publication of the proposed rule.

The supplemental PRIA assumes that no establishment or retail facility has incurred any costs associated with the requirements of this regulation prior to its effective date, even though many firms have already been providing the information that is being required.[22] Rather than prorate cost estimates in the safe handling rule based on the volume of ground or chopped products, the supplemental PRIA includes estimates for itemized costs that pertain specifically to nutrition labels. For processing firms, these costs in the supplemental PRIA include administrative costs, graphic design costs, prepress activities costs, plate engraving costs, nutrition analysis costs, and the costs of larger labels.

The supplemental PRIA explains that if retail firms choose to use store scale-printers to print nutrition labels for ground or chopped products, costs to these retailers would include upgrading store scales-printers to include nutrition information, redesigning larger store labels, providing a nutrition analysis for each product, and using larger labels. This method of labeling is referred to as ''Option 1'' in the analysis. If retail firms choose to apply an additional preprinted label with nutrition information to ground or chopped products, the cost to these retail stores would include designing a one-color nutrition label, conducting a nutrition analysis for each product, and purchasing and applying a separate label on packages of ground or chopped product at the retail level. This method of labeling is referred to as ''Option 2'' in the analysis.

The supplemental PRIA assumes that labels will be redesigned for company-wide use. The supplemental PRIA also assumes that small and large plants are owned by large, multi-firm establishments. In addition, the supplemental PRIA assumes that retail stores or chains with fewer than 500 employees produce 100,000 pounds or less annually of each ground or chopped product and are exempt from the nutrition labeling requirements for ground or chopped products. In the supplemental PRIA, the average material and labor cost for POP placards have been revised.

The benefits analysis is revised from the PRIA to reflect a constant value for each premature death prevented by the requirements of the rule to update cost to 2002 dollars. The value of preventing a premature death varied on the basis of age in the benefits analysis of the PRIA. Because of these changes, the benefits in the supplemental PRIA are higher than those of the PRIA.

TABLE 10—AVERAGE COSTS IN THE SUPPLEMENTAL PRIA

Bases of estimates	Total 1st year costs	Present value 7%	Present value 3%
	$ Million		
Retail costs, including POP materials: Option 1	75.58	312.77	424.53
Retail costs, including POP materials: Option 2	50.83	564.36	790.70
Costs to processors only	7.81	35.28	47.70
Total costs (Option 1)	83.38	384.06	472.23

[22] The impacts of a 68 percent compliance rate for nutrition labeling of ground or chopped products (NCBA, 2004) and a 54.8 percent compliance rate for major cuts (USDA, 1999) will be discussed at the conclusion of this section.

TABLE 11—BENEFITS OF THE PRIA AND SUPPLEMENTAL PRIA

Rule status	Annualized benefits		Present value	
	7%	3%	7%	3%
	$ Million			
Supplemental PRIA	205.5	248.3	2,176.7	3,694.4
PRIA	86.6	145.3	917.8	2,161.0

The supplemental proposed rule would require nutrition labels on all ground or chopped products, with or without added seasonings, unless an exemption applies, and would make the voluntary nutrition labeling program mandatory for major cuts, unless an exemption applies.

The cost analysis of the requirements for ground or chopped products is based on the FDA Labeling Cost Model developed by RTI, the Enhanced Facilities Data Base (EFD), Performance Based Inspection System (PBIS), the FSIS Performance Based Inspection System database, AC Nielsen Purchase Data of 2003, and Information Resources Inc. (IRI). The PBIS provides estimates of the number of very small, small, and large processing establishments that grind meat and poultry products. IRI scanner data and AC Nielsen Purchase Data provide estimates of the number of ground or chopped products produced by processing establishments.

Supplemental Proposed Rule Cost Estimates for Major Cuts

For the major cuts, FSIS assumes that retailers will comply by using POP placards. The number of retail establishments affected by the nutrition labeling requirements for the major cuts is based on 2002 data from the Bureau of the Census (Table 3).[23] The Census data are consistent with the establishment numbers used in the analysis of nutrition labeling of ground or chopped products used in the PRIA. The number of retail establishments used in the supplemental PRIA is 74,910 (owned by 47,688 firms) compared to 69,500 (comprised of supermarkets, other stores, and wholesale clubs) used in the PRIA (66 FR 4982, January 18, 2001). The use of the 2002 Bureau of Census data instead of FMI data (from the PRIA) results in a higher estimated cost of the POP requirements in the supplemental proposed rule. The supplemental PRIA's estimate is also higher than the PRIA's estimate because in the PRIA, FSIS assumed retail facilities would incur labor costs only and would not purchase frames and placards.

The cost of three nutrition information placards for displaying POP information for the major cuts is estimated to be $65.17 per store ($28.00 for placards and $37.17 for metal frames), based on information from the Food Marketing Institute (FMI) and *http://www.hubert.com.* Placards will be replaced every two years because of normal wear and tear. The supplemental PRIA estimates that an average of 0.5 hour at labor cost of $21.11 per hour, per store is the amount of time necessary to obtain and make available the POP materials, insert the placards or posters into frames, and post the information in the store. The average labor cost is then $10.16 ($21.11 × 0.5). The total average cost per store is then $75.73.

The average total cost of purchasing and installing posters or placards will be $5.67 million the first year and every other year after that ((74,910 establishments × $21.11 per hour × .5 hours) + (74,910 establishments × $65.17 per establishment)). The present value of this cost is $31.07 million when discounted at 7 percent over 20 years.

Supplemental Proposed Rule Cost Estimates for Ground or Chopped Product

Should this rule become final, both meat and poultry processing firms and retail establishments will incur compliance costs associated with nutrition labeling of ground or chopped products for such items as label redesign, nutrition analysis, larger labels, and upgrading store scale-printers. The following discussion presents the costs associated with nutrition labeling ground or chopped products for meat and poultry processing firms and for retail firms.

Meat and Poultry Processing Firms

The cost of nutrition labeling of ground or chopped products packaged by processing establishments is comprised of costs for redesigning preprinted product labels that will include a nutrition label (one-time cost), for conducting nutrition analysis on products to obtain information for the nutrition label (one-time cost), and for using larger labels that would be needed for the former product labels (recurring cost).

Based on an examination of labels applied to ground or chopped products that are labeled at processing establishments, the most common printing method for these labels is flexography.[24] Nutrition facts are typically printed in one color. The per-label modification estimated midpoint cost, in 2005 dollars, for a one-color change using the flexography printing method is $2,247. The estimated minimum cost is $1,528, and the maximum cost is $3,170. Cost depends upon the complexity of the label design (Table 12). These estimates reflect administrative, graphic design, prepress activities, plate engraving costs, and nutrition analysis. The paperwork costs are included in the administrative costs. FSIS assumes that the paperwork costs are about 14 percent of the midpoint estimate administrative costs. Thus, the midpoint estimate of the paperwork burden costs would be $44.66 ($319 × 14 percent) per label modification. The estimated total per label design modification cost ranges from a low of $929 to a high of $2,383 with a midpoint of $1,557.

[23] November 2005, more of the 2002 Census data was released.

[24] Flexography printing is frequently used for printing on plastic foil, acetate film, and other material used in packaging. Flexography uses flexible printing plates made of rubber or plastic. The inked plates with a slightly raised image are rotated on a cylinder which transfers the image to the substrate. Flexography uses fast-drying inks, is a high-speed print process, can print on many types of absorbent and non-absorbent materials, and can print continuous papers such as gift wrap and wallpaper.

TABLE 12—COSTS PER LABEL MODIFICATION FOR A ONE-COLOR CHANGE USING FLEXOGRAPHY PRINTING METHOD

Type of Cost	Low	Mid-Point	High
	Dollars		
Administrative[1]	137	319	502
Graphic design	342	513	684
Prepress activities	279	401	627
Plate engraving	171	323	570
Total label redesign	929	1,557	2,383
Nutrition analysis[2]	599	690	787
Total	1,528	2,247	3,170

[1] Includes regulatory affair costs that are similar to paperwork burden costs.
[2] RTI assumed that the cost for nutrition analysis would be the cost associated with analysis required to create a Nutrition Facts panel. Source: RTI, 2003, P.7.

Although nutrition information for some ground products will be available from the USDA National Nutrient Database for Standard Reference (USDA, Agricultural Research Service, 2005) or other low-cost sources, in many cases, the regulations would require that companies conduct a separate nutrition analysis for ground or chopped products for which the USDA National Nutrient Database for Standard Reference or other sources have not provided nutrition information. Because of the large variety of ground product formulations, many products will not likely be the same or similar enough to the products for which the USDA National Nutrient Database for Standard Reference or other sources provide nutrition information. Because FSIS could not identify the number of ground or chopped products that would require a separate nutrition analysis versus the number of products for which the USDA National Nutrient Database for Standard Reference or other sources supply complete nutrition information, FSIS estimated a one-time nutrition analysis cost for all ground or chopped products. The per-label cost of this analysis is in the range of $599 and $787, with an average of $690. On average, the Agency assumed that total label design will be $1,557, and a nutrition analysis will be $690.

Nutrition labels are designed for company-wide use. The number of affected companies is estimated by dividing the number of small and large establishments in Table 1 by three, the number of establishments owned on average by multi-establishment firms (Muth, 2003; *See* RTI analysis). Thus, the final estimate of the number of affected firms that own small or large Federal processing establishments that grind meat is 322 ((858 small processing establishments + 109 large processing establishments)/3). For the purposes of this analysis, very small establishments are considered to be exempt from the requirements for nutrition labeling of ground or chopped products because FSIS assumes they have fewer than 500 employees, are owned by companies with fewer than 500 employees, and FSIS assumes they produce 100,000 pounds or less annually of each ground product. The PBIS database does not include data on size of the owning company or processed product volumes. Thus, the total number of establishments affected by the rule for this analysis may be overestimated. In addition, this analysis includes 41 State establishments/firms that are small-sized. These firms were identified in PBIS database as having grinding operations that would produce ground or chopped products.

AC Nielsen Food Purchase data from 2003 and Information Resources Inc. (IRI) were used to identify ground meat and poultry products with or without added seasonings. The purchase data include data for frozen and fresh, ground or chopped products affected by the final nutrition labeling rule. The information shows that an average of 3.3 frozen ground meat or poultry products are produced by companies that grind meat and poultry. The data were then scaled to account for the total number of ground or chopped products by assuming that a typical company produces an equal number of fresh and frozen ground meat or poultry products. Therefore, multiplying 3.3 × 2 results in an average of 6.6 products per firm and 2,396 unique meat and poultry products (6.6 × 363 firms) that are subject to the labeling requirements of the rule.

The one-time, average cost for meat and poultry establishments to modify product labels on prepackaged ground meat and poultry products to include nutrition information at processing establishments is estimated at $5.38 million ($2,247 mid-point per label modification costs × 363 affected companies × 6.6 affected products per company). The average present value of this one time cost discounted over 20 years at 7 percent is $5.03 million.

In addition to the one-time costs of designing labels, companies will also incur costs for providing larger labels. The cost of larger labels was obtained by estimating the volume of ground meat and poultry products packaged by processors and multiplying the results by the incremental cost of larger labels. The cost of applying larger labels is assumed to be the same as the cost of applying smaller labels.

The NCBA's Meat Purchase Diary (RTI, 2003) indicates that an average American household purchases 49.3 pounds of raw ground beef annually from retail stores. Based on 112.0 million households in the United States (U.S. Department of Commerce, 2003), 5.5216 billion pounds (49.3 pounds per household × 112 million households) of ground beef are purchased from retail stores annually. The American Meat Institute estimates that 0.123 pounds of other ground meat and poultry products are consumed for every pound of ground beef. Consequently, an estimated 6.201 billion pounds of ground or chopped meat and poultry (5.5216 billion pounds × 1.123 scale factor) are purchased by consumers annually (66 FR 4987, January 18, 2001).

According to the NCBA, the average weight of a retail package is 2.735 pounds, with a distribution of 1.17 pounds at the 5th percentile and 4.35 pounds at the 95th percentile (McGowan, 2003). Dividing 6.201 billion pounds by 2.735 pounds per package yields an average of 2.267 billion packages of ground or chopped products sold at retail stores annually.

To determine the total number of packages sold at ''exempt''

establishments, the Agency, using U.S. Census 2002 data, FSIS found that 79.3 percent of total dollar sales by supermarkets, meat markets, and warehouse stores were sold by establishments owned by large retail firms and establishments (500 or more employees). These large retail firms and establishments (266) represent 0.006 of the total number of retail firms and establishments (47,688) affected by the rule as shown in Tables 4 and 5 above. Assuming that the percentage of total dollar sales is similar to sales for ground meat and poultry products, about 1.798 billion packages (2.267 billion packages × .793) of ground or chopped products are sold each year by nonexempt processing establishment and retail establishments.

Finally, a study conducted by NCBA, found that less than 25 percent of ground products are packaged by processing establishment (Dopp, 2001). Thus the Agency estimates that at most 566.75 million packages of ground or chopped products are packaged by processing establishments each year (2.267 billion packages × .25).

The Agency assumes that a larger label will cost an additional $0.005 per label, on average. This estimate was based on information from the FDA Labeling Cost Model (Muth, *et al.* 2003), where $0.005 was the difference in cost between the low and high cost estimates for pressure-sensitive labels. This estimate was evaluated by Hobart, a label manufacturer, who believed that it was reasonable (Schuller, 2003). Multiplying 566.75 million packages by the annual added cost of $0.005 per label results in an added cost of approximately $2.83 million, annually. The present value of these annual costs discounted at 7 percent is $30.02 million.

Retail Firms

The cost of nutrition labeling would also affect retail stores. But because of the small business exemption, fewer retail stores are affected by the requirements for ground and chopped products than the 74,910 establishments shown in Table 3. Using U.S. 2002 Census data shown earlier in Table 4, a total of 23,479 stores will be affected. Table 4 shows the number of retail stores that are owned by companies with more than 500 employees. FSIS assumes that stores or chains with 500 or fewer employees produce 100,000 pounds or less annually of each ground or chopped product and are, therefore, exempt from the nutrition labeling requirements for ground or chopped products.

Should the rule become final, retail establishments subject to the requirements of the rule may comply by either incorporating nutrition information on the label printed by store scale printer systems (Option 1) or by applying an additional preprinted label with nutrition information (Option 2). The cost of store-printed labels includes upgrading store scale-printers to include nutrition information, redesigning larger store labels, providing a nutrition analysis for each product, and using larger labels. Based on information from NCBA and FMI (Amstein, 2003) many scale-printers in retail establishments do not have the capability to print nutrition information on store-generated labels without an upgrade of memory capacity and software and either new printers or new printer heads. Based on a pilot study conducted by King Marketing Services, Inc., for the NCBA, the average cost to upgrade a scale-printer system in their study was $1,600 (Amstein, 2003). FSIS assumes that, on average, retail stores have 1.5 scales in their meat departments. Thus the total cost for upgrading printer-scale systems is assumed to be about $2,400 per store ($1,600 per printer × 1.5 printers). The total average cost to upgrade printer scales to provide store-printed labels for ground or chopped products is estimated at $56.35 million (23,749 retail establishments × $2,400 per establishment). The analysis assumes that scales with the added features for making store-printed labels are replaced every five years. The annual maintenance costs for an upgraded scale-printer is estimated to be 6 percent of $2,400 or $144 ($2,400 × .06) every year after a scale-printer has been purchased.[25] [26]

The cost of redesigning larger store logo labels to be used with the scale-printer systems was based upon cost data from the FDA Labeling Cost Model and Census data on the number of large companies that own retail establishments. As for preprinted labels, flexography is the most common printing method for the store logo labels used with scale printer systems. The cost to make a one-color label redesign change depending on the complexity of the label redesign ranges from a minimum of $929, an average of $1,557, and a maximum of $2,383, as shown in Table 12.[27] Because each company will need to redesign only one label, the average cost was multiplied by the 266 firms affected by the rule. The average one-time cost estimates for redesigning labels is $0.414 million ($1,557 per label design × 266 firms). The average one-time cost estimate for the paperwork costs (average regulatory affairs costs of $319 × 14 percent = $44.50) of redesigning labels is $11,837 ($44.50 × 266 firms). As with products packaged by processors, label redesign can not simply be incorporated into the normal label redesign process because it is a fundamental change in the label format. Once the label is redesigned, the costs of subsequent label redesigns will not be affected substantially.

To estimate the cost of conducting nutrition analysis for ground or chopped products packaged by retailers, the number of unique products was estimated. It was assumed that each firm (or parent company) would conduct a nutrition analysis once for each unique product, which might be sold in some or all of their retail facilities. The number of firms shown in Table 4 was multiplied by an average number of store-brand products packaged at each store. To estimate the average number of ground or chopped products packaged at retail, the number of ground or chopped products with store-applied packaging at six different grocery stores and three wholesale clubs was counted.[28] This analysis showed that grocery stores sell an average of 4.57 ground or chopped products and warehouse stores sell an average of 1.33 ground or chopped products packaged at the store. Multiplying 4.57 by the total number of grocery store firms and meat market firms and multiplying 1.33 by the total number of warehouse club firms in Table 4 results in 1,180 ((4.57 products × 255 grocery store and meat market firms) + (1.33 × 11 warehouse club firms))[29] unique products that will

[25] Based upon a communication between Warranty Department, Hobart Corporation, Troy, Ohio, and Gary Becker, USDA, FSIS, September 4, 2003, and a second communication between Sales Department, Hobart Corporation, Beltsville, Maryland, and Gary Becker, USDA, FSIS, September 4, 2003. The suggested retail price for a Quantum scale-printer is between $5,500 and $6,000. A one-year maintenance agreement would cost about $355. Therefore, it has been estimated that operating and maintenance costs would be about six percent of the purchase price annually ($355/$5,750 = 6%).

[26] It is possible that as new scale-printer systems are developed that the cost of including the added feature to new scale-printer systems may be less than $1,600 per scale. But to assume, as RTI reported, that there is no additional cost for these added features in the future results in an underestimate of the compliance costs.

[27] Package redesign varies depending upon what must be changed on the current label. Therefore, three estimates have been provided.

[28] Each store visited by RTI was owned by a different company and included medium and large sized stores. No meat markets were visited because RTI believed that no meat markets owned by companies large enough to be affected by the labeling requirements are located in the Raleigh-Durham area.

[29] Numbers are rounded.

require nutrition labels applied in retail stores. FSIS recognizes that a survey of six grocery stores and three wholesale clubs in one U.S. city is not a nationally representative survey. Because of limited time and Agency resources, information from this survey provided the best available data for FSIS's estimates. Although this is a significant area of uncertainty in the cost analysis, FSIS believes these data allow for reasonable estimates of the costs to retailers.

Using the cost of a nutrition analysis shown in Table 12 above, and the number of unique products that will require nutrition labels applied in retail stores the average cost estimate is $2.65 million ($2,247 × 1,180 unique products).

The use of larger labels is another cost that retail stores may incur should the rule become final. The cost of larger labels is the product of the number of packages of ground or chopped products sold in retail establishments and the cost of using a larger label. Earlier in the analysis, it was estimated that about 25 percent of approximately 2.267 billion packages or about 566.79 million packages of ground or chopped products are packaged by processing establishments each year. If the remaining 75 percent of total package volume of ground or chopped products is packaged at retail stores, then 1.700 billion packages (2.267 billion × .75) are packaged by retail stores annually. If the added average cost of each label is $0.005, then retail stores will incur an added cost of about $8.5 million (1.7 billion packages × $0.005).[30]

FSIS estimates that based on the analysis described above, the resulting average present value of one-time costs of upgrading scale-printer systems, added annual operating and maintenance costs for the scale-printer systems, one-time costs for redesigning larger store labels, one-time costs for conducting nutrition analysis, and present value costs for using a larger label will be about $209.43 million discounted at 7 percent.

The cost of the second method of complying with the labeling requirements for ground or chopped products at retail stores (Option 2) includes designing a one-color nutrition label, conducting a nutrition analysis for each product, and purchasing and applying a separate label on packages of ground or chopped products applied at the retail level. Using the same methodology that was described earlier, it is estimated that 1,180 unique products will be required to have nutrition labels applied in retail stores. Multiplying the number of unique products by the average per-label redesign and nutrition analysis costs (the cost of flexography is $2,470), results in a one-time cost estimate of $2.65 million (1,180 unique products × $2,247 per label design).

To estimate the cost of purchasing and applying labels to packages of ground or chopped products packaged at retail, the per-unit cost estimates from the FDA Labeling Cost Model were multiplied by the volume of packages described earlier.[31] FSIS estimates the annual cost using the average cost of $0.0293 per label applied. The estimated annual cost is $49.77 million ($0.0293 per label and application cost × 1.452 billion retail packages). All of these costs will be incurred by large and small businesses. The present value of these costs is $452.83 million when discounted at 7 percent.

Percentage Lean/Percentage Fat Labeling

In the PRIA, FSIS assumed that the cost per label to provide information regarding percent lean/percent fat would be comparable to those costs for nutrition labeling, $0.0025 to $0.05 per label, if that information was included as part of the price label and $0.01 per label if producers developed separate percent fat/percent lean labels. Based on the National Cattleman's Beef Association National Meat Case Study in 2004, approximately 25 percent of ground beef package labels surveyed had statements of the lean percentage of the packaged products but did not have nutrition facts panels. Therefore, FSIS assumed that many small businesses may currently include a statement of the lean percentage on the label of ground products but may not include nutrition facts panels on the product label. Based on this assumption, FSIS concluded that requiring small businesses that use the lean percentage and fat percentage statement on the label of ground products to also include nutrition information on the label of such products may result in significant expenses for small businesses. An additional 47,422 small businesses with an additional 51,431 retail establishments (stores) (*see* Table 5) may be affected. Based on the FSIS cost model (*see* Appendix B), this may increase the present value (7 percent) of average expenses for small businesses by about $394.16 million or by about $37.21 million when annualized (7 percent). Therefore, in this supplemental proposed rule, small businesses that use statements of percent fat and percent lean on the label or in labeling of ground products will be exempt from nutrition labeling requirements, provided they include no other nutrition claims or nutrition information on the product labels or labeling. FSIS is taking this action, pursuant to 5 U.S.C. 604(a)(5), to minimize the significant impact of the regulation on small and very small establishments and small retailers. By taking this action, many of these small businesses will not be affected by this rule at all.

Summary of Cost Estimates

FSIS estimates that the average present value of the compliance costs associated with the provisions of the supplemental proposed rule for retail and processing establishments is $348.06 million discounted at 7 percent,[32] or $472.23 million discounted at 3 percent[33] (*see* tables 13 and 14). The average annualized costs are $32.85 million and $31.74 million, based on a 7 percent and 3 percent discount rate, respectively. These estimates are based on the assumption that retail stores will choose the less costly of the two options which would be to upgrade their scale-printer systems, redesign larger store labels, conduct a nutrition analysis, and use larger labels. If these retail establishments choose the more costly option, the average present value cost to retail processing establishments could be as high as $599.64 million, discounted at 7 percent and $838.40 million, discounted at 3 percent.

The average present value cost of the supplemental proposed rule for retail establishments under option 1 would be

[30] The Agency assumed an average cost of $0.005 per label for a larger label because it represents the change in cost between low, midpoint, and high cost estimates for pressure-sensitive labels in the FDA Labeling Cost Model (Appendix B). The differences in the low, midpoint, and high cost estimates derive primarily from the differences in the size of labels. Second, a representative from Hobart, which manufactures labels, says that $0.005 was a reasonable estimate for the added cost of a larger label for including nutrition facts.

[31] The Agency estimated the low, mid-point, and high per-unit cost for purchasing and applying one-color pressure-sensitive labels in 2005 dollars to be $0.016, $0.0293, and $0.042, respectively.

[32] The FSIS analysis which takes into account the uncertainty associated with various cost factors shows that the values at the 5th and 95th percentiles for this average present value using a 7 percent discount rate and 20 year time horizon are $282.88 and $474.79 million, respectively. *See* Appendix D, Table 1.

[33] The FSIS analysis which takes into account the uncertainty associated with various cost factors shows that the values at the 5th and 95th percentiles for this average present value using a 3 percent discount rate and 20 year time horizon are $380.76 and $650.23 million, respectively. *See* Appendix D, Table 1.

$312.77 million using a 7 percent discount rate and $424.53 million using a 3 percent rate. However, under Option 2, the average present value cost to retail establishments could be $564.36 million discounted at 7 percent and $790.70 million discounted at 3 percent.

Processing establishments will incur the smallest portion of the cost increases. FSIS expects average present value costs to processing establishments costs to be $35.28 million discounted at 7 percent and $47.70 million discounted at 3 percent.

TABLE 13—COST SUMMARY OF THE SUPPLEMENTAL PROPOSED RULE (NOMINAL)

Measure	Year							
	1	2	3	4	5	6–10	11–20	Total
	$ Million							
Retail: Purchase & Install POP Placards	5.67	0.0	5.67	0.0	5.67	11.35	28.36	56.73
Processing: Modify Labels on Prepackaged Ground or Chopped Products	5.39	0.0	0.0	0.0	0.0	0.0	0.0	5.39
Processing: Larger Labels on Ground or Chopped Products	2.42	2.42	2.42	2.42	2.42	12.10	24.21	48.41
Retail : (Option 1	69.91	12.33	12.33	12.33	12.33	118.01	236.03	473.29
Retail: (Option 2)	45.13	42.51	42.51	42.51	42.51	212.55	425.10	852.86
Total Retail: (Option 1 and POP Placards)	75.58	12.33	18.01	12.33	18.01	129.36	264.39	530.01
Total Retail: (Option 2 and POP Placards)	50.83	42.51	48.18	42.51	48.18	223.90	453.47	909.58
Total All Processing Plants	7.81	2.42	2.42	2.42	2.42	12.10	24.21	53.80
Total Retail: (Option 1 and POP Placards) and Processing	83.39	14.75	20.43	14.75	20.43	141.46	288.60	583.81
Total Retail: (Option 2 and POP Placards) and Processing	58.64	44.93	50.60	44.93	50.60	236.00	477.67	963.38

TABLE 14—COST SUMMARY OF THE SUPPLEMENTAL PROPOSED RULE (DISCOUNTED)

Measure	Year							
	1	2	3	4	5	6–10	11–20	Total
7% Discount Rate	$ Million							
Retail: Purchase & Install POP Placards	5.30	0.0	4.63	0.0	4.04	6.62	10.47	31.07
Processing: Modify Labels on Prepackaged Ground or Chopped Products	5.04	0.0	0.0	0.0	0.0	0.0	0.0	5.04
Processing: Larger Labels on Ground or Chopped Products	2.26	2.11	1.98	1.85	1.73	8.64	7.08	30.24
Retail: (Option 1)	65.37	10.77	10.06	9.41	8.79	73.58	89.91	281.70
Retail: (Option 2)	42.23	37.11	34.69	32.44	30.31	124.36	151.80	533.29
Total Retail: (Option 1 and POP Placards)	70.67	10.77	14.69	9.41	12.84	80.20	100.38	312.77
Total Retail: (Option 2 and POP Placards)	47.53	37.11	39.32	32.44	34.35	130.88	162.28	564.36
Total All Processing Plants	7.71	2.11	1.98	1.85	1.73	7.08	8.64	35.28
Total Retail: (Option 1 and POP Placards) and Processing	79.60	12.88	16.67	11.26	14.56	87.27	109.03	348.06
Total Retail: (Option 2 and POP Placards) and Processing	62.34	39.22	41.29	34.28	36.08	137.95	170.92	599.64
3% Discount Rate	$ Million							
Retail: Purchase & Install POP Placards	5.51	0.0	5.19	0.0	4.90	8.96	18.27	42.82
Processing: Modify Labels on Prepackaged Ground or Chopped Products	5.23	0.0	0.0	0.0	0.0	0.0	0.0	5.23
Processing: Larger Labels on Ground or Chopped Products	2.35	2.28	2.21	2.15	2.09	9.56	13.36	42.46
Retail: (Option 1)	67.88	11.63	11.28	10.95	10.64	95.87	154.06	381.72
Retail: (Option 2)	43.85	40.09	38.90	37.75	36.69	167.87	269.77	747.88
Total Retail: (Option 1 and POP Placards)	73.39	11.63	16.48	10.95	15.54	104.82	172.32	424.53
Total Retail: (Option 2 and POP Placards)	49.36	40.09	44.09	37.75	41.59	176.83	288.04	790.70

TABLE 14—COST SUMMARY OF THE SUPPLEMENTAL PROPOSED RULE (DISCOUNTED)—Continued

Measure	Year							
	1	2	3	4	5	6–10	11–20	Total
Total All Processing Plants	8.00	2.28	2.21	2.15	2.09	9.56	15.36	47.70
Total Retail: (Option 1 and POP Placards) and Processing	82.66	13.91	18.69	13.10	17.63	114.38	187.68	472.23
Total Retail: (Option 2 and POP Placards) and Processing	64.74	42.37	46.30	39.90	43.67	186.39	303.40	838.40

The average cost increases that FSIS has identified are higher than those estimated by RTI in their revised final report to FSIS. RTI had estimated the present value cost to be $159.0 million discounted at 7 percent under Option 1. RTI had also estimated the present value cost to be $396.7 million discounted at 7 percent under Option 2. The FSIS estimates are higher than the RTI estimates because FSIS believes that scale-printers will have to be replaced periodically since they have a limited useful life. This equipment will also have to be maintained on a periodic basis. In addition, the costs are higher because the costs were updated to reflect 2005 costs instead of 2003 costs. Also, the U.S. Census 2002 data was used that indicated that there are more stores selling food products.

Impacts of Exemptions and Existing Compliance on Costs

FSIS did not reduce the compliance costs of the supplemental proposed rule to take into account the level of voluntary compliance with the nutrition labeling requirements for ground or chopped products that currently exists. Consequently, the estimated compliance costs for providing nutrition labeling of ground or chopped products are overstated. However, Appendix C, Tables 1, 2, 3, 4, and 5 show the estimated costs which take into account a 68 percent compliance rate (NCBA, 2004) of voluntary nutrition labeling of ground or chopped products that is currently assumed to exist.

FSIS estimated the costs to all retailers of obtaining and displaying POP information for major cuts. FSIS did not take into account the existing level of compliance with the voluntary guidelines for nutrition labeling of major cuts. Consequently, the estimated compliance costs for providing POP nutrition information are also overstated. The impacts of a 54.8 percent level of voluntary compliance (USDA, 1999) of stores that provide nutrition labeling for major cuts are, however, shown in Appendix C, Tables 1, 2, 3, 4, and 5.

Appendix D, Table 1 provides a summary of the present value costs of the rule after taking into account the levels of voluntary compliance that are currently assumed to exist. The average present value costs of the rule decline to $115.45 million and $156.72 million when using a 7 percent and 3 percent discount rate, respectively.[34]

Impact on Estimated Costs

The estimates of the total undiscounted compliance costs of the final requirements for ground or chopped product and POP requirements for major cuts are $583.81 million under Option 1. The average present value cost is $348.06 million at 7 percent, with all but $31.07 million attributed to the labeling costs for ground or chopped product. The average annualized cost of the supplemental proposed rule for ground or chopped product, using the same 7 percent discount rate, is $32.85 million. This cost is not significant relative to the volume of output of ground or chopped products sold at retail. For example, as noted earlier, the annual volume of these products sold at retail stores is estimated at 6.2 billion pounds. Therefore the annualized cost of the supplemental proposed rule per pound of ground or chopped product is $0.0053 ($32.85 million/6.2 billion pounds). Viewed another way, it was estimated earlier that the average weight of a retail package was 2.735 pounds. Therefore the annualized average cost of the supplemental proposed rule on a per package basis is $0.014 ($0.0053 per pound × 2.735 pounds per package). This increase compares to a price for ground beef that can easily exceed $2.00 per pound or over $5.00 for an average-size package.

Should the rule become final, FSIS believes that the compliance costs of the rule largely will be passed on to consumers in the form of higher product prices because the demand for meat and poultry products is inelastic. Huang (1993) analyzed a group of meats and other animal proteins consisting of products including beef and veal, pork, other meats, chicken, turkey, fresh and frozen fish, canned and cured fish, eggs, and cheese. He concluded that the price elasticity of demand for this group of products was (−0.3611), *i.e.,* a one percent increase in price for one of these products would reduce demand by only 0.3611 percent.

Review of about a dozen recent studies annotated by William Hahn (1996) of the Economic Research Service reveals that estimates of price elasticity of demand for most beef products (ground beef, steak, chuck roast, *etc.*) is less than one. Consequently, consumers are unlikely to reduce their demand for beef, ground meat products, *etc.,* significantly when beef prices increase a few pennies per pound. Some consumers may demand labeled products, even at a higher cost per pound, given the value of the information from a diet/health perspective.

2. Supplemental Proposed Rule Benefit Analysis

Research Findings

FSIS conducted an extensive search of research on the impacts of nutrition labeling and consulted with the Economics Research Service, USDA on the estimation of benefits. FSIS has found that there are a limited number of nationally representative studies on the effect of nutrition label and POP nutrition information use on dietary intakes. In these studies, the authors frequently examine consumer behavior before and after a significant change in the availability of nutrition labeling information (*e.g.,* Nutrition Labeling and Education Act (NLEA) implementation and relaxation on the prohibition of health claims). The general conclusion of the available research is that there is a positive relationship between the availability of nutrition information and improvements in diet quality.

[34] The FSIS analysis which takes into account the uncertainty associated with various cost factors shows that the values at the 5th and 95th percentiles for this average present value using a 7 percent discount rate and 20 year time horizon are $94.72 and $155.97 million, respectively. The values at the 5th and 95th percentiles of the present value cost distribution using a 3 percent discount rate are $127.63 and $213.60 million, respectively. *See* Appendix D, Table 1.

Research by Kim, *et al.* used USDA's Continuing Survey of Food Intake by Individuals, 1994–96 (CSFII) and the associated Diet Health Knowledge Survey (DHKS) to evaluate the impact of nutrition labels required by the NLEA on consumer label use and intake of selected nutrients. They used an econometric model to evaluate the effects of nutrition label usage by comparing the nutrient intake of label users with the expected intake of the label user in the absence of labels. For those who use nutrition facts information, the intake of calories from total fat, saturated fat, cholesterol, and sodium decreases by 6.9 percent, 2.1 percent, 67.6 mg, and 29.58 mg respectively.

However, measuring the effectiveness of nutrition labels on dietary intake is complicated by the relationship between label reading and other factors that also affect diet. For example, consumers with high levels of knowledge and concern about nutrition are likely to eat a healthier diet than consumers who are less concerned about nutrition; they are also more likely to read labels and use labels to guide their diet. A recent study Variyam (2008) uses the same dataset as Kim *et al.* (2000) and finds that the labels increase only fiber and iron intakes of label users compared with label nonusers. The author notes that in comparison, a model that does not account for self-selection implies significant label effects for all but two of the 13 nutrients that are listed on the NFP. Below we provide some information from other studies that show an association between nutrition label and improved diet. However, we note that these studies did not account for the potential self-selection problem and may overstate the effectiveness of nutrition labeling in improving diet. In addition, none of these studies directly assessed the consumer responses to labeling on raw meat products.

Neuhouser, *et al.* 1999, analyzed data from a survey of 1,450 adult residents in Washington State. The survey assessed nutrition label use, fat-related diet habits, fruit and vegetable consumption, diet-related psychological factors, health behavior and demographic characteristics. They concluded that nutrition label use was significantly associated with lower fat intake and, after controlling for all demographic, psychosocial, and behavioral variables, nutrition label use explained 6 percent of the variance in fat intake, with a probability of 99.9 percent.

Teisl and Levy in 1997 conducted a 3-year study on the direct effects of nutrition shelf label information on consumer purchasing behavior. Shelf labels containing nutrition information were found to have small but significant effects on consumer dietary patterns. The study also found that providing nutrition information may allow consumers to more easily switch consumption away from ''unhealthy'' products in food categories where differences in other quality characteristics, such as taste, are relatively small toward consumption of products in food categories where the difference in taste between the more and less fatty products may be relatively large. The type and format for the nutrition information used in the study, brand specific nutrition information provided on the shelf in conjunction with the products' unit and item price information, may help to explain the results. This research shows that the main effect of the nutrition shelf labeling program occurred relatively quickly. The authors attribute this response, in part, to ancillary activities efforts, such as measures to enhance consumer health education, occurring as part of the initial nutrition labeling program being evaluated.

Related research conducted by Teisl, Bockstael, and Levy in 2001 found that the provision of nutrition information led consumers to change purchase behavior, but may not necessarily lead to their buying more ''healthy'' foods. They conclude that consumer responses to nutrition labeling may take two forms: a ''health'' effect and a ''substitution'' effect. The first arises when consumers reduce net intake of ''unhealthy'' nutrients and increase purchases of ''healthy'' foods. The second effect occurs when consumers increase their level of satisfaction by substitution across food categories using nutrition information to maintain an overall level of health risk while increasing satisfaction from other food attributes, such as flavor. They also note that economic analyses that identify the benefits of health risk reduction as the costs of foregone illness may understate the overall benefits of nutrition labeling. They assert that consumer welfare is improved (and, therefore, there is a willingness to pay for nutrition information) even if health risks are not reduced because consumers make food choices more in line with non-health preferences about food attributes.

Research by Moorman in 1996 examined whether the NLEA increased consumers' understanding of nutrition information at the point of sale, whether understanding of nutrition information has been promoted regardless of individual consumer preferences, and whether understanding of nutrition information at the point of sale has increased for healthful and non-healthful products. Moorman found statistically significant increases in consumers' nutrition information acquisition after the NLEA took effect. Motivated consumers acquired more information after the law went into effect than before and even the less motivated more accurately recalled fat content after the law went into effect. The research also found that consumers retained more information about higher fat products (defined as those having more than 5.5 grams of fat per serving) than they did about lower fat products. The author made the assessment that standardized and adequate nutrition information, as required by the NLEA, raised awareness of the nutritional quality of food products, thereby increasing the focus on higher fat products. Consequently, the NLEA may have spurred product competition, even among high fat products (Aldrich).

Ippolito and Mathios (1995) studied the effect of an FDA relaxation on a prohibition against health claims. Following the decision to allow health claims on labels in 1985, nutrition advertising, a form of nutrition education when such advertising contains factual information, increased significantly. While they found that fat consumption per capita fell prior to the FDA decision to allow health claims on labels, it fell at a faster rate after the prohibition was eased. Their research also found that prior to when health claims were allowed, fat consumption declined among categories of food whose fat or cholesterol content was widely communicated: Meat, eggs, and fats and oils. However, increases in fat content from other foods largely offset these consumption declines. After relaxing the prohibition, people consumed less fat across more categories, with less of an increase in consumption in other categories. The results suggest that more specific information about nutritional content of foods assists consumers in making healthier food choices within food categories.

In related research, Mathios and Ippolito (1998) analyzed the effect of nutrition information in advertising and labels on consumption of food cereals with fiber content. They divided their study into two periods: The period 1974–1984, when the FDA permitted printing of fiber content on cereal boxes but did not permit printing of any health claims; and the period 1985–1987, when health claims were permitted. They concluded that, in concert with an increase in fiber intake of cereals in their diets, the average

intakes of fat, saturated fat, and dietary cholesterol for both men and women declined during both the periods, albeit the decline was greater during the second period relative to the first. They concluded that the increase in fiber and the decrease in fat and cholesterol consumption were associated with the consumption of labeled cereals.

Although the self-selection issue noted above complicates the precise measurement of the incremental impact of labeling, the results of the studies identified above suggest there may be a positive link between nutrition label use and dietary change beyond that resulting from healthier eating habits of those who regularly rely on nutrition labels.

Consumer Response to Nutrition Labeling

FSIS consulted with ERS to develop the empirical analysis of the benefits of nutrition labeling for the proposed rule (Crutchfield, *et al.,* 2001b). The estimated benefits take the form of reductions in the incidence of coronary heart disease and three types of cancer that may accrue as consumers improve their diet quality through increased use of nutrition information generated by the regulation.

As will be shown, survey data on nutrient intake and label use were used to correlate intake of fat, saturated fat, and cholesterol with usage of existing nutrition information. The Agency estimated the value of the potential changes from intake of fat, saturated fat, and cholesterol that could occur as consumers respond to the newly available nutrition information. A model developed by Zarkin *et al.* (1991, 1993) links changes in the serum cholesterol rate to changes in the percentage of total calories from polyunsaturated fat, saturated fat, and dietary cholesterol. Changes in serum cholesterol are then used to estimate the health outcomes, which are reductions in the number of cases and mortality from three cancers (breast, colorectal, and prostate) and coronary heart disease. Finally, the economic value to the public health changes were estimated by assuming an implied value of life associated with reductions in premature mortality.

Assumptions were made concerning consumer behavior to determine how much of a behavioral response and change in dietary intake may result from providing more nutrition information on meat and poultry products. For example, when nutrition labels and other sources of nutrition information are provided for raw meat and poultry products, FSIS made the assumption that nutrition information usage rates will rise to match nutrition label usage rates for food products as a whole (Table 15).

TABLE 15—CONSUMER USAGE OF NUTRITION INFORMATION

	Often		Sometimes		Rarely/never		Do not buy	
	Men	Women	Men	Women	Men	Women	Men	Women
Use nutrition facts panel	26.7	41.7	25.6	32.6	47.7	25.6	n/a	n/a
Look for nutrition information on raw meat	16.9	22.1	18.2	18.0	62.7	57.9	2.2	2.0

Note: Percent of respondents, based on 3 year weighted averages, 1994–1996. Crutchfield, *et al.,* 2001b.

TABLE 15b—CONSUMER USAGE OF NUTRITION INFORMATION AFTER MANDATORY LABELING FOR RAW MEAT, POULTRY, AND FISH

	Often		Sometimes		Rarely/never		Do not buy	
	Men	Women	Men	Women	Men	Women	Men	Women
Use nutrition facts panel after mandatory labeling	26.1	40.9	25.0	31.9	46.7	25.1	2.2	2.0

Using the proportions of men (2.2 percent) and women (2.0 percent) who report not buying raw meat, poultry or fish, the new assumed label use distribution after mandatory labeling is shown in Table 15b. The percentage of men who would use the label often to buy raw meat, poultry, or fish would be 26.1, which is obtained as 0.267*97.8, where .267 is the proportion of men who use label often in Table 15 and 97.8 is the percentage of men who buy raw meat, poultry, or fish.

Currently, some nutrition information is provided for some single-ingredient, raw meat and poultry products, but the information is not currently required. Mandatory nutrition labeling rules for the major cuts and ground or chopped products would mean that the nutrition information provided for these products would be comparable to that provided for other food products. The analysis could reasonably assume that nutrition information usage rates for raw meat and poultry products would then become the same as the nutrition label usage rates for all foods taken together. For example, before mandatory nutrition information labeling, the data show that about 17 percent of men look for nutrition information on meat ''Often'' (Row 2 of Table 15). In this analysis, then, it is assumed that after mandatory nutrition information labeling, 26.7 percent of men would use the nutrition fact panel or POP materials for meat products, which is the nutrition label usage rate for all foods (Row 1 of Table 15). Similarly, the Agency assumed that the percentage of women using nutrition information on meat products ''Sometimes'' would rise from 18 percent to 32.6 percent.

To assess the impacts on diet quality, the Agency assumed in the preliminary regulatory impact analysis that as nutrition information usage rates rise for consumers eating meat and poultry, dietary patterns will change in a manner consistent with current data. However, Crutchfield *et al.* (2001b) note that this is an ''admittedly strong'' assumption. As shown above, there is strong statistical evidence that people who use nutrition information to guide their food consumption decisions have healthier diets. While other factors may be at work, the Agency made the assumption that the provision of additional nutrition information and making that information available to more consumers will lead to behavioral shifts and improved diet quality. Thus, the assumption is made that the effect of providing new nutrition information for meat and poultry products would make some (not all) consumers who currently do not look for nutrition information on

meat and poultry products more aware of the dietary implications of their food choices. As these consumers see the new nutrition labels on packages of meat and poultry products or new POP information, they may begin to use the nutrition label or POP information or to use it more frequently. Some of these consumers would then choose to consume the same mix of products as people who are currently aware of the nutritional quality of meat and poultry products because they look for such nutrition information as currently is available. For example, men who currently do not look for nutrition information on meat in the absence of mandatory nutrition information labeling who would begin using this information ''Sometimes'' after nutrition labeling is in place would see a decrease in fat intake from 96 grams to 92.5 grams (Row 1 of Table 16). Women who previously had been using labels ''Sometimes'' who now use them ''Often'' would see a decrease in saturated fat intake from 20.60 grams to 17.39 grams (Row 5 of Table 16). Similar changes in fat and saturated intakes as a percentage of total calories can be assessed from Table 17.

The Crutchfield *et al.* (2001b) study simply assumed consistency of behavior toward label use and changes in diet quality. Whether the assumption leads to overstating or understating health benefits is not known.

Consumers will not use labels to make very significant dietary changes. If diet quality associations found with all other labeled foods do not hold up for nutrition labels on meat, then health benefits in the supplemental PRIA are overestimated. Of course, health benefits are only one way in which benefits might be realized. Consumers might choose to use nutritional information to enhance enjoyment of food, and not to raise their health status. Further, they may be better off than if they had raised their health status, since rational consumers will use information to their best advantage. If we observe rational, well-informed consumers selecting a more enjoyable diet, for these consumers a more enjoyable diet was worth more than better health. Thus, when we restrict benefits estimates to allow only for information to be used to advance health status, we are simultaneously restricting estimated benefits to a lower level of value to consumers. The FSIS analysis imposes that restriction and the resulting benefits estimate must therefore be interpreted as an underestimate of overall benefits.

TABLE 16—DIETARY INTAKE OF FAT, SATURATED FAT, AND CHOLESTEROL BY USAGE OF NUTRITION INFORMATION ON RAW MEAT, POULTRY, OR FISH

	Often	Sometimes	Rarely/ never	Do not buy	Average
Men:					
Total fat	81.64	92.49	96.09	74.48	92.51
Saturated fat	27.20	31.09	32.44	24.02	31.12
Cholesterol	311.81	321.49	355.14	236.83	339.07
Women:					
Total fat	53.90	61.70	62.18	57.23	60.16
Saturated fat	17.39	20.60	21.41	17.27	19.71
Cholesterol	194.32	219.27	216.55	135.89	210.53

Note: Fat intake in grams, cholesterol in milligrams. Crutchfield, *et al.,* 2001b.

TABLE 17—PERCENTAGES OF CALORIES FROM FAT, SATURATED FAT, BY USAGE OF NUTRITION INFORMATION ON RAW MEAT, POULTRY, OR FISH

	Often	Sometimes	Rarely/ never	Do not buy	Average
Men:					
Total fat	31.67	34.03	33.88	26.69	33.44
Saturated fat	10.53	11.36	11.37	9.52	11.19
Cholesterol	311.81	321.49	355.14	236.83	339.07
Women:					
Total fat	31.62	32.94	32.87	26.79	32.49
Saturated fat	10.15	10.82	10.82	9.19	10.64
Cholesterol	194.32	219.27	216.55	135.89	210.53

Note: Fat and saturated fat values are percentages of total calories; cholesterol in milligrams. Crutchfield, *et al.,* 2001b.

Under these assumptions, then, the Economic Research Service of the U.S. Department of Agriculture analyzed how requirements for mandatory nutrition information labeling of raw meat and poultry products could possibly affect diet quality (Crutchfield, *et al.,* 2001b). Table 18 shows the estimated intake of fat, saturated fat, and cholesterol, by gender, after adjusting for the assumed change in patterns of label use. To reach the values shown in Table 18, each cell in Table 16 (the dietary intake of fat, saturated fat, and cholesterol) was multiplied by the associated percentage of label use (nutrition facts panel use) from Table 15. This increased the number of people in the ''often'' and ''sometimes'' cells, and decreased the number of people in the ''rarely/never'' cells, so that the distribution of label usage on meat and poultry products would reflect the distribution of label usage on all products.

TABLE 18—CHANGE IN INTAKE DUE TO INCREASED LABEL USAGE

	Intake prior to mandatory labeling for meat & poultry	Intake after adjusting for increased label usage	Decreased intake
Men:			
Total fat	92.51	91.31	1.3%
Saturated fat	31.12	30.69	1.37%
Cholesterol	339.1	335.0	4.12
Women:			
Total fat	60.16	58.57	2.65%
Saturated fat	19.71	19.45	1.32%
Cholesterol	210.5	208.2	2.37

Note: Fat intake in grams, cholesterol in milligrams. Fat and saturated fat intake changes are in percentage terms, cholesterol intake changes are absolute changes in milligrams. (Crutchfield, *et al.,* 2001b.)

Applying these new label use percentages of men and women to their intakes in Tables 18 and 19, the new estimated changes in intakes, after accounting for non-buyers, are reported in Tables 18b and 19b.

TABLE 18b—CHANGE IN INTAKE DUE TO INCREASED LABEL USAGE, ASSUMING THAT THE PERCENTAGE OF NON-BUYERS REMAINS UNCHANGED

	Intake prior to mandatory labeling for meat & poultry	Intake after adjusting for increased label usage	Decreased intake
Men:			
Total fat	92.51	90.94	1.7%
Saturated fat	31.12	30.55	1.83%
Cholesterol	339.1	335.0	4.1
Women:			
Total fat	60.16	58.54	2.69%
Saturated fat	19.71	19.40	1.57%
Cholesterol	210.5	210.52	−0.02

Note that the second column in Table 18b is computed as the weighted average of intakes from Table 16, using the percentages in Table 15 as weights. For example, for the total fat intake of men, 81.64 *.261 + 92.49 *.25 + 96.09 *.467 + 74.48 *.022 = 90.94.

Aggregating across categories, a new weighted average intake is obtained, which could be seen after the imposition of mandatory labeling requirements. Table 19 shows the percentage of calories from fat and cholesterol intake that were derived in a similar manner using intakes from Table 17.[35]

TABLE 19—CHANGE IN PERCENTAGE OF CALORIES FROM FAT AND CHOLESTEROL INTAKE DUE TO INCREASED LABEL USAGE

	Intake prior to mandatory labeling for meat & poultry	Intake after adjusting for increased label usage	Decrease in intake
Men:			
Total fat	33.44	33.33	0.11
Saturated fat	11.19	11.14	0.04
Cholesterol	339.1	335.0	4.12
Women:			
Total fat	32.49	32.37	0.11
Saturated fat	10.64	10.54	0.10
Cholesterol	210.5	208.2	2.37

Note in Table 19 that fat intake is in grams, and cholesterol is in milligrams. Further, fat and saturated fat intake changes are in percentage terms, and cholesterol intake changes are absolute changes in milligrams. (Crutchfield, *et al.,* 2001b).

[35] The calculations in Tables 18 and 19 ignore the fact that 2.2% of men and 2% of women report not buying meat, poultry or fish (Table 15). If these proportions are assumed to remain unchanged after mandatory labeling, then the decrease in intakes estimated in Tables 18 and 19 would be slightly different.

TABLE 19b—CHANGE IN PERCENTAGE OF CALORIES FROM FAT AND CHOLESTEROL INTAKE DUE TO INCREASED LABEL USAGE, ASSUMING THAT THE PERCENTAGE OF NON-BUYERS REMAINS UNCHANGED

	Intake prior to mandatory labeling for meat & poultry	Intake after adjusting for increased label usage	Decrease in intake
Men:			
Total fat	33.44	33.19	0.25
Saturated fat	11.19	11.11	0.08
Cholesterol	339.1	335.0	4.1
Women:			
Total fat	32.49	32.23	0.26
Saturated fat	10.64	10.50	0.14
Cholesterol	210.5	210.52	−0.02

Note: Fat and saturated fat intake changes are in percentage terms, cholesterol intake changes are absolute changes in milligrams.

Applying these new label use percentages of men and women to their intakes in Tables 18 and 19, the new estimated change in intakes, after accounting for non-buyers, are reported in Tables 18b and 19b.

Comparing Table 18b with Table 18 and Table 19b with Table 19, it can be seen that when the proportions of non-buyers are assumed to remain unchanged, the estimated decrease in intakes of fat and saturated fat are higher, decrease in cholesterol is nearly the same for men, whereas for women cholesterol intake increases slightly. This is because the fat and saturated fat intakes of buyers are higher than non-buyers, whereas the cholesterol intakes of women buyers are in general lower than women non-buyers. Based on these magnitudes, if the new numbers are used in the calculations, the benefits of labeling are likely to be even higher.

Evaluation of Health Effects

Based on epidemiological research, the estimated reductions in calories from fat and cholesterol intake (Table 19) were used to estimate the decrease in the incidence of major diseases associated with consumption of fat and cholesterol. The diseases considered in this analysis include three types of cancer and coronary heart disease. Epidemiological studies of the relationships between dietary fat and cholesterol intake and incidence of cancer and coronary heart disease indicate that saturated and polyunsaturated fat and cholesterol are converted into serum cholesterol. Serum cholesterol has an impact on the incidence rates of these diseases. Zarkin, *et al.* (1993) developed a model which estimated the relationships between dietary intake of fat and cholesterol to convert fat contents into the change in fat and serum cholesterol:

$$(1)\ SC\ (Mg/) = 2.16S - 1.65P + 0.097C$$

Where SC is serum cholesterol, S is the change in percentage of total calories represented by saturated fat, P is the change in percentage of total calories represented by polyunsaturated fat, and C is the change in dietary cholesterol measured in mg/1,000 calories.

Mancino and Kuchler (2009) show that the threat of severe adverse health consequences can induce significant improvements in diet quality (improvements from the perspective of the public health community, not from consumers' perspectives). Cigarette smoking and dietary intake of cholesterol, total fat, and saturated fat are lower for those whose physicians told them they have high cholesterol, compared to those with undiagnosed high cholesterol. But, some also choose to compromise diet quality. Mancino and Kuchler found that dietary intake of cholesterol is unaffected by the decision to take cholesterol-lowering medication. However, for those taking cholesterol-lowering medication, diets are higher in total fats and in saturated fats than are diets of those with unmedicated high cholesterol. The waist circumference of those on medication is also larger, although some of the increase may be associated with reduced cigarette consumption. The increased dietary intake of fat and saturated fat, along with increased waist size are telling evidence of offsetting behavior, as medication lowers the health price of unhealthy choices.

Reductions in serum cholesterol are then converted to reduction in risk of coronary heart disease and the three types of cancers. The estimated values of percentage changes in saturated fat and cholesterol intake from the last column of Table 18 were substituted into the model developed by Zarkin, *et al.* Since separate data for polyunsaturated (P) fat were not available, it was assumed that P would be one-third of total fats, as was also assumed by Zarkin, *et al.* The estimates of serum cholesterol for male and female consumers and reductions in mortality are shown in Table 20.

TABLE 20—REDUCTION IN SERUM CHOLESTEROL AND CHANGE IN MORTALITY

	Change in calories from total fat	Change in calories from saturated fat	Change in cholesterol intake	Change in serum cholesterol	Reduction in mortality
	% change				%
Men	0.11	0.04	4.12	0.399	0.0240
Women	0.11	0.10	2.37	0.231	0.0139

The calculated values of SC presented above were used to estimate incidence of breast, prostate, colon/rectal cancer, and coronary heart disease. Zarkin, *et al.* (1993) concluded that an increase in serum cholesterol by 20 mg/1,000 calories was associated with a 1.2-percent increase in the incidence of each of these diseases. This rate was used to convert reductions in total fat, saturated fat, and cholesterol in Table 18 into SC. It is estimated that the

reduction in mortality associated with changing dietary pattern resulting from mandatory nutrition information labeling are 0.024 percent for men, and about 0.014 percent for women. However, Crutchfield *et al.* (2001b) note that: ''the link between fat intake, serum cholesterol, and cancer risk is less clear than for coronary heart disease.''

The PRIA did not estimate changes in total meat or poultry consumption that may result from the rule, because of the assumption that consumers would choose different types of meat and poultry to reduce fat, saturated fat, and cholesterol. For example, consumers may consume more poultry and less red meat, or they may consume more white poultry meat and less dark poultry meat in response to the newly available nutrition information. Also, in response to the nutrition information, consumers may prefer to purchase meat that has been trimmed more closely to remove fat.

The assumption that total consumption of meat or poultry would not change in response to the newly available nutrition information is consistent with the approach taken by other studies that examine consumers' response to health claims. One such study is noted in the PRIA (66 FR 4989, January 18, 2001). There is no research available that establishes a relationship among nutrition labeling information, health effects, and total meat or poultry consumption.

Table 21 presents data on the annual number of deaths associated with the three types of cancer and coronary heart disease for men and women in the United States in 1998. Data for the number of deaths came from the National Center for Health Statistics (coronary heart disease) and the American Cancer Society (cancer). Data on colorectal cancer were not available by gender; FSIS assumed the estimated 56,000 cases were distributed equally between men and women.

TABLE 21—REDUCTION IN MORTALITY, NUMBER OF DEATHS, AND ESTIMATED LIVES SAVED

	Reduction in mortality (%)		Number of deaths		Number of lives saved		
	1	2	3	4	5	6	7
	Men	Women	Men	Women	Men	Women	Total
Breast Cancer	.....	0.0139	.....	41,200	0	6	6
Prostate Cancer	0.0240	.....	31,900	.....	8	0	8
Colorectal Cancer	0.0240	0.0139	28,000	28,000	7	4	11
Coronary Heart Disease	0.0240	0.0139	231,332	228,769	55	32	87

The fact that FSIS's analysis did not estimate changes in total meat or poultry consumption may be a limitation of the results, but it is not a major concern, because FSIS's analysis assumes that when consumers read the new nutrition information, they will use the information and choose to consume the same mix of products as consumers that are aware of the nutritional quality of meat and poultry. The calculations in the PRIA are based on a distribution of nutrition label usage on meat and poultry that reflects the distribution of nutrition label usage for food products as a whole. FSIS did not receive comments on the fact that the PRIA did not estimate changes in total meat or poultry consumption. The supplemental PRIA incorporates the PRIA's estimates of potential changes from intake of fat, saturated fat, and cholesterol that could occur as consumers respond to the newly available nutrition information. Finally, the Agency attached an economic value to the public health changes by estimating the implied value of life associated with reductions in premature mortality.

Using recent estimates, deaths from breast cancer are estimated at 39,800, prostate cancer at 29,800 and colorectal cancer at 57,100 in 2003. Deaths from coronary heart disease are estimated at 515,204 for 2000. As a result, the estimated lives saved due to dietary changes from nutrition labeling are revised from those shown in Table 21. The revised estimates are as follows: annual deaths from breast cancer are reduced by an estimated 5.5, deaths from prostate cancer by 7.2, deaths from colorectal cancer by 10.8, and deaths from coronary heart disease by 97.8.[36] The total annual lives saved due to dietary changes from nutrition labeling for all diseases is 121.7.

Effect of Nutrition Labeling on Consumer Attitudes About Beef

As reported by the National Cattlemen's Beef Association (2009) the U.S. meat industry trade organizations, namely the National Cattlemen's Beef Association (NCBA), the Food Marketing Institute (FMI) and the National Pork Board (NPB), conducted research to examine the benefits and challenges of implementing on-pack nutrition labeling for meat products. This research included qualitative and quanitative studies (via focus groups) to explore consumer needs, behavior and preference for nutrition labeling on fresh meat products.

Focus Group Key Learnings

Findings from the focus groups indicated that consumers desire more nutrition information, find both on-pack and POP materials useful but prefer on-pack, and still want to see the product they are purchasing. Additional learnings indicate:

—Consumers want to see nutrition information for fresh meat and they want more information on specific nutritional content.

• Information on fat content, calories per serving, cholesterol and proteins are of greatest importance.

• Micronutrients (vitamins and minerals) are also of interest.

—Consumers are generally unaware of the micronutrients found in fresh meat products and they want to see all of the nutrient information a food provides (but aren't interested in what a food doesn't have such as 0 percent for Vitamin C).

—Consumers currently use on-pack labels most often to learn about the nutritional content of meat products because there is higher awareness for labels than for posters or take-home brochures.

Beef Checkoff-Funded Research

Given the beef industry's philosophy that nutrition information should be widely available to help people make informed purchase decisions, yet understanding the challenges many retailers face in providing the information in a simple and easy-to-understand format, NCBA embarked on a number of additional nutrition labeling research projects. The goal of

[36] These estimates are based upon the rates that were calculated for the PRIA.

this subsequent research was to further understand appropriate methods and vehicles for retailers to share the information with consumers.

Effect of Exemptions on Benefits Estimates

Under this rule should it become final, all very small establishments would be exempt from the requirement for nutrition labeling of ground or chopped products because they have 500 or fewer employees, are owned by companies with 500 or fewer employees, and likely produce 100,000 pounds or less annually of each ground product. Finally, retail firms that have 500 or fewer employees would be exempt from nutrition labeling requirements for ground or chopped products, provided they produce 100,000 or less annually of each ground product. This exemption for small businesses will reduce the benefits associated with the rule in proportion to the share of ground or chopped products affected by the rule that are sold at these establishments.

FSIS estimates that the number of packages of ground or chopped product sold or produced through exempt facilities is approximately 469 million packages (2.267 billion packages times 20.7 percent, the estimated share of packages sold at ''exempt'' establishments as shown using U.S. Census 2002 data in the Cost Analysis). At an average of 2.735 pounds per package, the average amount of ground or chopped product sold at these establishments is about 1.283 billion pounds (469 million packages × 2.735 pounds per package). FSIS estimates that of the total of 6.201 billion pounds of ground or chopped meat and poultry products consumed annually, 4.918 billion pounds will be affected by the labeling requirements of the rule.

As discussed above, the rule would provide numerous exemptions from nutrition labeling requirements, in addition to the small business exemptions, for ground or chopped products sold through retail facilities. FSIS reduced costs and benefits to account for the small business exemption regarding the labeling of ground or chopped products. However, FSIS did not reduce the costs or benefits estimates to account for the other exemptions for ground or chopped product because the volume of ground or chopped product that would qualify for these other exemptions is very low.

Should it become final, the supplemental proposed rule would not provide a small business exemption from the nutrition labeling requirements for the major cuts. The rule provides numerous other exemptions from nutrition labeling requirements for the major cuts. However, FSIS did not reduce the costs or benefits estimates to account for the exemptions for major cuts because the volume of major cuts that would qualify for these exemptions is very low.

FSIS estimates that the total amount of major and nonmajor cuts of single-ingredient, raw meat and poultry products is 19.6 billion pounds.[37] Of this amount, FSIS estimates that 16.745 billion pounds, or 85 percent are major cuts, would be subject to the label requirements of the rule as indicated above. The estimate of the total amount of single-ingredient, raw meat and poultry products that are not ground or chopped is based on recent research conducted by the Economic Research Service on beef and pork consumption and on information provided by the National Chicken Council and National Turkey Federation at their Web sites. The derivation of this estimate is shown in Appendix A, Tables 1–4.

Based on these estimates, 16.745 billion pounds of major cuts are affected by the supplemental proposed rule. From above, 4.918 billion pounds of ground or chopped product are affected by the rule, for a total of or 21.663 billion pounds of meat and poultry products. This compares to a total of 63 billion pounds of red meat and poultry products consumed in the United States in 2003.[38] The exemption for small businesses affects 1.283 billion pounds of ground or chopped product, or 5.92 percent of the total amount of meat and poultry products affected by the rule. Consequently, the total annual lives saved due to dietary changes from nutrition labeling for all diseases is reduced accordingly. For example, the maximum number of lives saved annually declines from 121.7 to 114.5 (121.7 × (1.0–0.0592)).

Estimating the Benefits of Preventing Premature Death

The benefits of this supplemental proposed rule would be the lives saved due to the estimated reductions in mortality rates associated with coronary heart disease and selected cancers. The Agency believes that there are potential benefits associated with the reductions in non-fatal cases of coronary heart disease. However, identifying and quantifying the risk reduction of premature death in an economic context is difficult. Similarly, it is also complex applying risk reductions of non-fatal cases of diseases within an economic context.[39] Given questions concerning data quality and unsettled methodological issues in estimating the benefits of a reduction in non-fatal cases of coronary heart disease, FSIS is restricting its analysis of benefits to reductions in premature death.

If food were marketed by risk levels (*e.g.,* probabilities of inducing cancer or heart disease), and consumers treated advertised risk levels as they do other objectively measurable product characteristics (*e.g.,* weight or volume), there would be little difficulty in valuing diet-related food safety risk factors. Product prices could be statistically associated with risk levels, yielding the risk-dollar trade-off consumers make. That is, one could measure, based on consumer purchases, the dollar value consumers attach to particular types of risk reduction. However, there is no ''market'' for reducing diet-related fatal risks and these values can not be measured.

There is no price that can be tabulated from commercial transactions that reflects the value of reducing diet-related fatal risks. Actions that individuals might take to reduce these risks do not leave a behavioral trail for analysts to follow. This informational void makes it difficult to evaluate programs that might reduce diet-related risks. In particular, there is no obvious dollar value to assign to the major benefit of such programs, namely lives saved and reductions in cases of non-fatal diseases.

Ultimately, FSIS wanted to monetize the benefits of diet-related fatal health risk reduction. The Agency's goal was to find a method of transferring market-based risk-dollar trade-off estimates to diet-related fatal cancer risks.

The most studied risk choices are those for on-the-job risks of accidental injury and death. Analysts have estimated the compensation required to induce workers to accept such risks. Many studies of labor market behavior have been carried out because the wide range of risk levels workers accept and the wide range of wages paid are amenable to statistical analysis. Available evidence suggests that workers' subjective assessments of risks they face are plausible (Viscusi, 1992).

[37] This amount includes nonmajor cuts of single-ingredient, raw meat and poultry that are not ground or chopped. The data available do not distinguish between major and nonmajor cuts.

[38] *Source:* Per capita consumption estimates are found at U.S. Department of Agriculture, World Agricultural Supply and Demand Estimates and Supporting Materials. Published in Livestock, Dairy, and Poultry Outlook, *http://www.ers.usda.gov/publications/ldp/*. Total consumption is based on a total U.S. population of 288.4 million.

[39] For an in-depth analysis of this issue, *see* Fred Kuchler and Elise Golan, 1999.

FSIS is using a range for the value of life of $5.0 million to $6.5 million with a mean of $5.5 million. The preliminary regulatory impact analysis of the rule used a single value of $5.0 million. The value of a statistical life is not the value an individual would pay to save his own life, but the aggregate value paid by many individuals to reduce a small risk of death each faces. To make this transfer, FSIS assumed that individuals make consistent risk choices, reducing health risks as much as their budgets allow. The Agency assumed individuals focus on the likelihood of health outcomes and the gravity of these outcomes.[40]

Viscusi (1992) has summarized the empirical work estimating the value of risk of premature death. Several studies had estimated the risk-dollar trade-off in the labor market by dividing the wage premium for high-risk jobs by the risk of a fatal job injury. Drawing on the compiled results of these studies, he stated: ''Although the estimates of the risk-dollar trade-off vary considerably depending on the population exposed to the risk, the nature of the risk, and similar factors, most of the reasonable estimates of the value of life are clustered in the $3 to $7 million range'' (Ibid., p. 73). Thus, compensating wages indicate that, on average, industrial workers value a statistical life at $5 million (December 1990 dollars), the midpoint of the range. The Economic Research Service, USDA has used a value of $5 million per life estimate (adjusted upwards for inflation to 2000 dollars) to measure the benefits of preventing premature death from foodborne diseases caused by microbial pathogens such as *E. coli* O157:H7, *Salmonella spp.,* and *Listeria monocytogenes* (Crutchfield, *et al.,* 2001a). This estimate has been used by other government agencies to evaluate the benefits of regulations designed to reduce the risk of premature death. For example, the Food and Drug Administration (66 FR 6137, January 19, 2001) and the Consumer Product Safety Commission (Miller, 1997) currently use Viscusi's mid-point value of $5 million for each life saved (Kuchler and Golan, 1999, p.25). Finally, the Food and Drug Administration (68 FR 41434, July 11, 2003, and 69 FR 56824, September 22, 2004) use both $5.0 million and $6.5 million as the value of a statistical life. FSIS believes that the value for a statistical life used in the analysis is consistent with current practices, OMB guidance, and research.

It should be noted that the calculations used to estimate present value explicitly account for the time factor associated with delayed health impacts of dietary change. Decreases in intake of saturated fat, fat, and cholesterol will reduce the incidence of heart disease and cancer, but not immediately—the reductions in illness and death will begin to occur years into the future. To address the uncertainty associated with the reduced incidence of heart disease and cancer, FSIS identified three plausible scenarios that are intended to encompass the actual impact. The scenarios are shown in Table 22. The first scenario assumes that there would not be any reduction in mortality in the first time period covering the first two years after the effective date of the rule. During the second time period covering the third through the seventh years following the effective date, 25 percent of the potential reduction in human health risk is achieved—28.6 lives saved annually as a result of dietary changes. In period 4, covering the last eight years of the period of analysis, the full reduction in human health risk is achieved—114.5 lives saved annually as a result of dietary changes. In scenarios 2 and 3, the benefits of the rule are assumed to occur progressively later in the period of analysis.

TABLE 22—HUMAN HEALTH IMPACT FOR ALTERNATIVE SCENARIOS—ANNUAL PERCENTAGE REDUCTIONS IN MORTALITY AND LIVES SAVED

Percent of Total Reduction	Period 1	Period 2	Period 3	Period 4
	0	25	50	100
Scenario 1				
Years in period following effective date	1–2	3–7	8–12	13–20
Lives saved annually	0	28.6	57.3	114.5
Scenario 2				
Years in period following effective date	1–5	6–10	11–15	16–20
Lives saved annually	0	28.6	57.3	114.5
Scenario 3				
Years in period following effective date	1–8	9–13	14–18	19–20
Lives saved annually	0	28.6	57.3	114.5

To arrive at an estimate of the benefits associated with reductions in mortality due to changes in fat and cholesterol intake, FSIS multiplied the dollar values assigned to each premature death ($5.0, $5.5, and $6.5 million) prevented by the number of lives saved annually in the three scenarios due to changes in diet quality. The present values of the benefits associated with the reductions in mortality associated with the scenarios identified in Table 22 are shown in Table 23. The net present value of the human health benefits of reduced mortality for all diseases over 20 years is estimated to be a maximum of $5.9 billion under Scenario 1 using a discount rate of 3 percent and $6.5 million for each premature death avoided. The lowest present value of human health benefits occurs under Scenario 3 using a discount rate of 7 percent and $5.0 million for each premature death avoided and is

[40] FSIS revised the method employed in the preliminary regulatory impact analysis of the rule to estimate human health benefits based on guidance to all Federal agencies concerning the estimation of human health benefits. The revised method uses a single value for each premature death prevented, regardless of age. The revised method results in significantly higher human health benefits resulting from the nutrition labeling requirements of the rule.

estimated to be $1.1 billion. These benefits would be distributed among the diseases evaluated in the same share that they represent of total lives saved due to dietary changes from nutrition labeling as shown above.

Based on the information shown in Table 22, FSIS constructed a composite scenario for all diseases by first computing the average number of lives saved annually from the three scenarios. The derivation of lives saved for the composite scenario is shown in Appendix A, Table 5. The annual average for lives saved over the 20 year period under the composite scenario was 50.1. This compares with annual averages of 67.3, 50.1, and 32.9 lives saved under scenarios 1, 2, and 3, respectively (Appendix A, Table 5). To estimate an average human health benefit over the three scenarios, the annual average number of lives saved under the composite scenario is multiplied by each of the three values for a statistical life year. The average is then computed for each year to derive the annual values of lives saved under the composite scenario as is shown in Appendix A, Table 6. Each value was weighted equally. The results of the analysis of the composite scenario show a net present value for lives saved of $3.694 billion using a 3 percent discount rate, and $2.177 billion using a 7 percent discount rate. The corresponding annualized human health benefits from the reduction in all diseases are $248.3 and $205.5 million, respectively. The benefits estimates presented here assume POP nutrition information to be equally successful as nutrition labels in leading to dietary change and consequent reductions in the three cancers studied and coronary heart disease. However, this assumption is not realistic. The analysis of alternatives section below provides a range of benefits estimates using different assumptions about the relative effectiveness of the POP nutrition. These annualized values will be used in the cost-effectiveness analysis.

TABLE 23—PRESENT VALUE OF HUMAN HEALTH IMPACTS FOR ALTERNATIVE SCENARIOS OVER 20 YEARS, 3 PERCENT AND 7 PERCENT DISCOUNT RATES

Scenario/ value of a statistical life	Present value 3%	Present value 7%	Average annual benefit 3%	Average annual benefit 7%
	$ Million			
Scenario 1				
5.0	4,502.4	2,776.4	302.6	260.7
5.5	4,952.7	3,037.5	332.9	286.7
6.5	5,853.2	3,589.8	393.4	338.8
Scenario 2				
5.0	3,223.8	1,865.8	216.7	176.1
5.5	3,546.1	2,052.4	238.4	193.7
6.5	4,190.9	2,425.6	281.7	229.0
Scenario 3				
5.0	2,053.6	1,134.8	138.0	107.1
5.5	2,258.9	1,248.3	151.8	117.8
6.5	2,669.7	1,475.3	179.4	139.3
Composite	3,694.4	2,176.7	248.3	205.5

Effects of Current Compliance Levels

As has been discussed in the Cost Analysis, the level of participation in the voluntary nutrition labeling program is 54.8 percent of stores for major cuts (USDA, 1999). In addition, an estimated 68 percent of ground or chopped products bear nutrition labels (NCBA, 2004). The analysis of benefits presented above assumes no prior compliance. Were these levels of compliance incorporated into the amount of meat and poultry product affected by the supplemental proposed rule, the amount of product affected would decline from 21.6 billion pounds to 9.1 billion pounds[41] (21.6 billion pounds minus 16.7 billion pounds of major cuts × (1.0–0.548) and 4.9 billion pounds ground or chopped product × (1.0–0.68). Since the benefits analysis treats the consumption of types of meat and poultry products the same in terms of their impacts on human health, the benefits would be reduced accordingly. Instead of achieving a maximum number of lives saved of 114.5 annually, which is the starting value for the benefits analysis, the rule would save at most 42.1 lives annually. Under the composite scenario, modified accordingly, the annual number of lives saved would be 18.4. The present values of the benefits are $1.358 and $.800 billion using 3 and 7 percent discount rates, respectively. The corresponding annual benefits are $91.3 million and $75.5 million. The estimated benefits under this scenario can be compared with those in Table 23 above.

[41] The estimates amounts of major cuts and ground or chopped products are shown in Table 24.

3. Minimum Effectiveness of Measures Required by the Supplemental Proposed Rule for Benefits To Exceed Costs

In the cost analysis of the proposed and supplemental proposed rules, FSIS assumes that retailers will display POP nutrition information for the major cuts rather than apply nutrition labels to these products because this is a lower-cost means of providing nutrition information for multiple products. The benefits analysis does not provide separate estimates of the benefits of nutrition labels and POP information as it was not possible to distinguish between the behavioral response and change in dietary intake associated with these two means of conveying nutrition information to the consumer.

The Agency assumes that when labels and other sources of nutrition information are provided for raw meat

and poultry products that nutrition information usage rates will rise to match label usage rates for food products as a whole, and that dietary patterns will change in a manner consistent with current data. Labeling, as used in the surveys matching its usage and dietary changes, has generally been interpreted to mean on-package labels rather than POP labeling. Consequently, the discussion of the benefits of the rule has implicitly focused on on-package labels.

In the analysis below, we first estimate the reduction in risk associated with POP nutrition information sufficient to equate its benefits and costs. Then we estimate remaining benefits of the rule that must be attributed to on-package nutrition labels for benefits to exceed costs.

The estimated cost of providing POP nutrition information is $5.67 million starting the year of the effective date and every other year thereafter. The net present values using a discount rate of 3 and 7 percent for the 20-year period of analysis are discounted costs of $42.82 and $31.07 million, respectively. The annualized values for these net present values are $2.88 and $2.93 million, respectively (Table 25). The net present values for the 20-year costs of on-package nutrition labels for ground and chopped products are $429.41 million and $316.99 million, using 3 and 7 percent discount rates, respectively. The annualized cost associated with net present values using 3 and 7 percent discount rates are $28.86 and $29.92 million, respectively.[42] Under the composite scenario discussed in the benefits analysis, there is an average of 50.1 lives saved annually as a result of the nutrition labeling requirements of the rule.

The average reduction in risk for the benefits of POP nutrition information for major cuts of single ingredient, raw products to equal their cost is 0.53 lives saved annually ((2.88+2.93)/2)/5.5) assuming a value of life of $5.5 million (Table 25). The reduction in risk for the benefits of on-package nutrition labels for ground or chopped products to equal their cost is about ten times greater (5.34 lives saved annually).

The estimated total reduction in risk in order for the benefits of these combined measures to exceed costs is 5.87 lives saved annually or about one-ninth (5.87/50.1) of the estimated 50.1 lives saved annually under the composite scenario, using a value of life saved of $5.5 million.

TABLE 25—BREAK-EVEN ANALYSIS OF THE SUPPLEMENTAL PROPOSED RULE MEASURES

Measure	Annualized average costs ($million)		Number of lives saved annually for benefits to equal costs		
	Discount rate		Value of life ($million)		
	3%	7%	5.0	5.5	6.5
POP nutrition information for major cuts of single ingredient, raw products	2.88	2.93	.58	.53	.45
On-package nutrition labels for ground or chopped products [1]	28.86	29.92	5.88	5.34	4.52
Total	31.74	32.85	6.46	5.87	5.97

[1] The costs of on-package labels include all costs that are not directly attributable to providing POP nutrition information as identified in Table 13.

E. Analysis of Alternatives

The previous discussion of regulatory alternatives provided a description of the regulatory alternative considered and information on the likely costs of the alternatives. The analysis that follows provides a quantification of the potential effectiveness of the alternatives as well as a comparison of cost-effectiveness and potential net benefits.

The regulatory alternatives considered by the Agency employ one or both of the following measures: POP nutrition information and on-package nutrition labels. The combination of measures and the products subject to these measures differ among the regulatory alternatives considered. In the supplemental proposed rule (Alternative 3), on-package nutrition labels are required for ground or chopped meat and poultry products (unless an exemption applies), and on-package nutrition labels or POP nutrition information are required for the major cuts of single ingredient, raw meat and poultry products (unless an exemption applies). It is assumed for the purpose of estimating compliance costs that, given the option, retail establishments will provide POP information in the form of placards to convey nutrition information for major cuts of single ingredient, raw meat and poultry products. Alternative 2 stipulates POP nutrition information for ground or chopped product and for major and nonmajor cuts of single ingredient, raw products. It is assumed for purposes of estimating the cost of this alternative that retail establishments will use a reference manual to convey nutrition information for the products covered. Retailers may employ other methods, however. Alternative 4 requires on-package nutrition labels for ground or chopped products and major cuts. Alternative 5 stipulates on-package nutrition labels for ground or chopped product, and both major and nonmajor cuts of single ingredient raw products.

Relative Effectiveness in Providing the Necessary Material Facts

The Agency considered several factors in selecting Alternative 3. The factors reflect the significant differences in the two principal categories of meat and poultry products— ground or chopped products and major and nonmajor cuts, consumer preferences, and the effectiveness with which information about these two categories of products is presented in retail establishments.

Differences in product characteristics, consumer preferences, and demand for nutrition information affect the value of nutrition information for the two general categories of products. The justification for the government action in requiring nutrition information differs for the two categories of products, as has been argued in the need for the rule. Different approaches to labeling may be warranted and what might be an effective approach for

[42] Annualized benefits are defined as the average annual amounts, when discounted, will provide a present value benefits equal to that shown for the selected scenario. It is a means for providing a single annual amount for a scenario showing significant differences on a year-to-year basis.

providing nutrition information for one category may be unsuitable for the other. FSIS finds that this is the case, based on the full range of evidence available.

Ground or chopped product are formulated to achieve a specific fat content and thus are similar to multi-ingredient and heat processed products, which receive on-package nutrition labels. The nutritional characteristics of these products can vary significantly. For example, the percentage of total fat in ground beef may range from 3 to 30 percent. Consequently, consumers have a significant number of choices concerning type of product and nutritional characteristics. Nutrition information enables consumers to match product choices with nutritional preferences.

While the processor formulating the ground or chopped product has knowledge of the nutritional characteristics of each product formulation, such information is not readily available to the consumer. Significant differences in total fat content of ground and chopped products may be difficult for the consumer to distinguish. Consequently, there is little incentive for processors to provide information on ground or chopped products with higher fat content. Yet, consumers' information needs are significant, given the differences in consumer preferences for high fat and low fat products. Under these conditions, readily accessible nutrition information would be highly valued by consumers. FSIS has concluded that clear and concise information should be available to consumers of ground or chopped product in the form of an on-package label. It would be confusing to consumers if nutrition information were provided by POP placards for all potential formulations of these products. Faced with a large array of signage, the potential value of nutrition information could be exceeded by the transactions cost for many consumers seeking such information.

Because there are numerous formulations of ground or chopped product, it would be difficult for producers or retailers to develop POP materials that would address all the different formulations that exist for these products. Furthermore, it would be difficult for consumers to find the correct information for a specific ground or chopped product on POP materials that include information concerning numerous formulations of these products (66 FR 4977, January 18, 2001). If a statement of the fat percentage and lean percentage were not included on a package of ground product, consumers would not know which nutrient data concerning ground product on POP materials would apply to that particular ground product. Thus, FSIS on-package nutrition labels would likely enable consumers to make product comparisons far more efficiently because consumers would have more relevant information directly attached to the products to inform their choices.

Major cuts are generally considered by consumers to be largely undifferentiated products in terms of nutrient content (Van Ravenswaay). The nutritional characteristics of one beef chuck blade roast are perceived to be much the same as another. The differences in nutritional characteristics for a particular major cut (*e.g.,* chicken breasts) vary much less than the nutritional characteristics for a type of ground or chopped product (USDA, 2005). This is an important factor to consider as consumer preferences are more likely to differ on the basis of the type of major cut (*e.g.,* chicken breasts versus pork loin chops).

Based on the similarity of nutritional attributes of any specific major cut and the type of information desired by consumers, FSIS has concluded that it would be acceptable for retail establishments to provide nutrition information via POP placards for major cuts. They are an efficient means of providing such information given the relatively small number of products sold at retail establishments, their relatively large share of total meat and poultry consumption, and consumer information needs.

In developing the regulatory alternatives, the Agency concluded that, given the option, retail establishments would most likely not choose to provide nutrition information for nonmajor cuts via POP placards. There are potentially a large number of such products (350 products for meat alone according to the National Live Stock Meat Board). Using POP placards to convey nutritional information on these products could result in excessive signage at retail establishments. Excessive signage would not only be a concern for the retail establishment, but also would not convey information in a manner that would promote its usage by consumers. Retail establishments would be more likely to opt for providing nutrition information for nonmajor cuts in a reference manual. The following table summarizes factors considered by the Agency in its selection of Alternative 3 as the most effective in providing the material information to consumers.

TABLE 24—COMPARISONS OF METHODS FOR CONVEYING NUTRITION INFORMATION AND MEAT AND POULTRY PRODUCT CATEGORIES

Method	Product category	
	Ground or chopped	Single-ingredient, raw
POP Nutrition Information.	• Information asymmetry is greater than the information asymmetry in POP nutrition information for major cuts and nonmajor cuts that are not ground or chopped. • Consumer preferences differ on the basis of fat content. • Nutrition information on formulated products (ground or chopped products) is less accessible on POP materials than it would be on product labels. • Given the number of product formulations, it would be confusing to consumers to use POP nutrition information.	• Nutrient content of a given major cut is relatively uniform across the market, and these products are not formulated in the manner of ground or chopped products. • Consumer preferences differ on the basis of types of products in the category. Placards. • Efficient means of presenting nutrition information for major cuts—relatively small number of products comprising large share of meat and poultry consumption. • Ineffective means of information delivery for nonmajor cuts that are not ground or chopped: potentially large number of products resulting in excessive signage. • Nonmajor cuts account for small share of consumption. Reference Manual.

TABLE 24—COMPARISONS OF METHODS FOR CONVEYING NUTRITION INFORMATION AND MEAT AND POULTRY PRODUCT CATEGORIES—Continued

Method	Product category	
	Ground or chopped	Single-ingredient, raw
On-Package Labels	• Information asymmetry is greatest for product category. • Consumer preferences differ on the basis of fat content. • Information is clear and concise. • Highly-valued information for consumers because consumer preferences differ most for these types of products on the basis of nutritional content. • Consumer search costs are minimized.	• Reference manual is low-cost means of information delivery. However, high search costs may greatly reduce effectiveness. • Number of nonmajor products is large and amounts comprise about 15% of meat and poultry consumption. • Uniform reference manuals not likely given regional differences in names of similar nonmajor products. • Nutrient content of a given major cut is relatively uniform across the market, and these products are not formulated in the manner of ground or chopped products. • Consumer preferences differ on the basis of types of products in the category. Major cuts. • Consumers have reasonable expectations as to the nutrient content of these products. Nonmajor cuts. • Consumers have limited access to nutrition information for nonmajor cuts.

A major source of uncertainty in this analysis is the success of POP nutrition information relative to on-package nutrition labels. Research studies on effectiveness of POP information virtually ended with passage of the NLEA. So, most POP research is now quite dated. Thus, the research available does not allow FSIS to make a precise comparison of the relative success of on-package nutrition labels versus POP nutrition information. However, POP nutrition information may be a convenient and effective means for consumers to confirm or gain new information on the nutritional content of the major or nonmajor cuts of single ingredient, raw products. Given these uncertainties, in the analysis that follows, FSIS assumes that POP nutrition information is 50 percent, 10 percent and 5 percent as successful as on-package nutrition labels in causing dietary change to illustrate the impacts of those assumptions on the relative cost-effectiveness as well as net benefits of the alternatives.

Analysis of Cost Effectiveness

A cost-effectiveness analysis (CEA) provides a means to identify alternatives that achieve the most effective use of resources available without requiring the monetization of all benefits or costs by comparing regulatory alternatives with respect to their ability to achieve a specified outcome (*e.g.,* units of human or environmental health). Regulatory alternatives employing the same measures are ordered on the basis of the increased frequency, scope, lethality, or some other criterion. Ideally, a CEA results in comparison of the incremental cost per unit of outcome for each regulatory alternative when the alternatives are ordered on the basis of an increasing level of the specified criterion.

FSIS agrees that cost effectiveness ratios for regulatory options should be calculated incrementally, that is, in terms of the additional cost incurred by the next most stringent option to produce an additional life saved. However, the data available for the analysis and the nature of the regulatory alternatives poses some challenges to conducting a meaningful incremental CEA. First, the regulatory alternatives stipulate the use of one or two measures that may be employed for providing nutrition information for two or three categories of products—ground or chopped product and single-ingredient raw products (major and nonmajor cuts)—of meat and poultry. The two measures are POP nutrition information materials and on-package nutrition labels. Second, the effectiveness of POP nutrition information relative to on-package nutrition labels is uncertain. The greater amount of time required by the consumer to find the relevant nutrition information on POP materials relative to finding such information on the packaging of the products suggests that POP nutrition information may be less successful for some types of products in leading to healthier dietary choices. Given the assumptions we make in order to model the regulatory provisions given the uncertain effectiveness, the result is an incremental cost-effectiveness analysis which shows that multiple alternatives are weakly dominated under all scenarios. Consequently, the analysis that follows provides a comparison of average cost-effectiveness and net-benefits of the regulatory alternatives for each alternative, for different levels of assumed relative effectiveness of POP information.

Average Cost-Effectiveness of Regulatory Alternatives

Cost-effectiveness analysis results based on averages can be misleading in that the regulatory alternative exhibiting the lowest cost-effectiveness ratio may not be the best option. Low ratios are not always an accurate indicator of high net social benefits, the desired economic objective. The following provides information on the average cost effectiveness of the regulatory alternatives and their net benefits.

In order to analyze both the average cost effectiveness of the regulatory alternatives and incremental cost effectiveness of the measures employed by the regulatory alternatives, the share of the reduction in risk associated with the POP nutrition information for ground and chopped products and both major and nonmajor cuts are estimated. Estimates of the number of products subject to on-package nutrition labeling are also provided. The costs corresponding to the risk reduction measures are also estimated. Table 26 provides the information that was used to allocate the annualized costs and reductions in risk.

The reductions in risk associated with the regulatory alternatives reflect the differences in the pounds of product affected. Alternatives 2 and 5 affect ground and chopped products and the

major and nonmajor cuts, a total of 24.5 billion pounds (Table 26). Alternative 3 (the supplemental proposed rule) requires on-package nutrition labels for ground or chopped products and either on-package nutrition labels or POP nutrition information for the major cuts, a total of 21.6 billion pounds. Alternative 4 affects the same amount of product as Alternative 3. The differences in pounds of products affected among the regulatory alternatives are reflected in the annual number of lives saved. The potential number of lives saved annually for Alternatives 2 and 5 are increased proportionately by 13 percent (24.5/21.6 = 1.1343) to reflect the difference in pounds of product affected. Therefore, the maximum number of lives saved annually for Alternatives 3 and 4 is 50.1. The corresponding value for Alternative 2 and 5 is 56.8 lives saved annually (50.1 × 1.1343).

The total cost of Alternative 2, which is exclusively the cost of the POP nutrition information manual, is allocated among ground and chopped product, and major and nonmajor cuts on the basis of the share of products in these categories (CFR §§ 317.344 and 381.444, National Livestock Meat Board, 1995). The costs associated with labeling measures for the product categories (on-package nutrition labels for ground and chopped and major cuts, and on-package labels for these products plus nonmajor cuts for Alternatives 4 and 5, respectively) are allocated on the basis of the relative shares of these products at retail establishments.

TABLE 26—MEAT AND POULTRY PRODUCT INFORMATION

Meat and poultry product volumes affected by regulatory alternatives	Billion pounds	Percent shares for Alternatives 2 & 5	Percent shares for Alternatives 3 & 4
Major and nonmajor cuts	19.6	80.0	77.3
Major cuts	16.7	68.2	77.3
Nonmajor cuts	2.9	11.8	.....
Ground or chopped	4.9	20.0	22.7
All meat and poultry	24.5	100.0	100.0

Products in POP nutrition information manual	Number of products	Percent share for Alternative 2	
Ground or chopped	13	3.0	.....
Major cuts	45	11.0	.....
Nonmajor cuts [1]	350	86.0	.....
Total	403	100.0	.....

Products at retail establishments with on-package nutrition labels	Number of products	Percent share Alternative 5	Percent share	
			Alt. 3	Alt. 4
Ground or chopped	12.50	22.0	100.0	28.3
Major cuts	31.74	56.0	.....	71.7
Nonmajor cuts	12.42	22.0	.....	.....
Total	56.66	100.0	100.0	100.0

[1] A comprehensive listing of nonmajor cuts was provided in the *Uniform Retail Meat Identity Standards* published by the National Livestock and Meat Board. Nonmajor cuts of poultry, of which there are few, are not included. Amenable kinds of poultry are not accounted for. Most ducks, geese, squab are sold as carcasses and there is only a very small market for ostrich cuts/parts; and rhea and emu are used for byproducts mostly.

The present value and corresponding annualized costs for the regulatory alternatives and their measures are shown in Table 27. There are no costs associated with Alternative 1 as it represents the status quo. As is reflected in their costs, the alternatives become increasingly costly due to the increasing share and number of products that receive on-package nutrition labels, which are significantly more costly than POP nutrition information. The present value cost of the alternatives range from a low of $87.74 million for Alternative 2 to $956.48 million for Alternative 5. The present value of the compliance costs of the alternative selected by the Agency is $348.06 million. The table also shows the compliance costs, both present value and annualized, on the basis of the major product categories.

TABLE 27—AVERAGE COSTS OF REGULATORY ALTERNATIVES

Alternative	Present value		Annualized values	
	3%	7%	3%	7%
	$ million			
Alternative 2. POP manuals for all products:				
Total	123.19	87.74	8.28	8.28
Ground & chopped	3.93	2.80	.26	.26
Major cuts	13.59	9.68	.91	.91
Nonmajor cuts	105.68	75.27	7.1	7.1
Alternative 3. On-package labels for ground and chopped, POP placards for major cuts:				

TABLE 27—AVERAGE COSTS OF REGULATORY ALTERNATIVES—Continued

Alternative	Present value		Annualized values	
	3%	7%	3%	7%
	$ million			
Total	472.23	348.06	31.74	32.85
Ground & chopped	429.41	316.98	28.86	29.92
Major cuts	42.82	31.07	2.88	2.93
Alternative 4. On-package labels for ground and chopped products and major cuts:				
Total	1,103.90	812.99	74.20	76.75
Ground & chopped	429.41	316.98	28.86	29.92
Major cuts	674.49	496.00	45.34	46.82
Alternative 5. On-package labels for all products:				
Total	1,298.74	956.54	87.30	90.28
Ground & chopped	429.41	316.99	28.86	29.92
Major cuts	674.49	496.00	45.34	46.82
Nonmajor cuts	194.84	143.49	13.10	13.54

Note: These compliance costs do not take into account the level of voluntary compliance with the labeling required under each alternative. Consequently, the estimated compliance costs are overstated.

The lives saved associated with the nutrition labeling measures for ground or chopped products, and major and nonmajor cuts are based on the amount of product affected by the measures for each of the regulatory alternatives. For example, 16.7 billion pounds of major cuts are affected by POP nutrition information placards under Alternative 3 (Table 26). On-package nutrition labels are required for the 4.9 billion pounds of ground and chopped meat and poultry products affected by Alternative 3. The average annual 30.74 (19.37 + 11.37) lives saved as a result of this alternative, assuming POP nutrition information is 50 percent as successful as on-package nutrition labels in causing dietary change, is obtained as follows. The average annual lives saved as a result POP nutrition information for major cuts is 19.4 lives as shown in Table 28 (16.7/21.6 = 0.77; (0.77 × 50.1) × .5 [43] = 19.4). On-package nutrition labels for ground or chopped products account for the remaining 11.4 lives saved annually (4.9/21.6 = .227; .227 × 50.1 = 11.4).

Table 28 shows the cost-effectiveness of the regulatory alternatives when POP nutrition information is assumed to be half as successful as on-package nutrition labels in bringing about healthier diets and reducing coronary heart disease and cancer. This success rate is considered to be an upper bound. The cost per life saved for Alternative 3 is $1.069 million, when using the composite annual average and annualized costs based on a 7 percent discount rate. The cost per life saved for on-package nutrition labels for ground or chopped products under this alternative is $2.63 million ($29.92 million from Table 27/11.37 lives saved annually, column 1 of Table 28) and $151,000 for POP nutrition information placards under this alternative ($2.93 million from Table 27/19.37 lives saved annually).

As would be expected under this scenario, Alternative 4 and 5 are less cost effective than the supplemental proposed rule measures because they rely entirely on the relatively more costly measures of on-package nutrition labels. Alternative 2 has a lower cost-effectiveness ratio in this scenario because of the assumed high rate of success for POP nutrition information and because it relies entirely on a low-cost POP reference manual.[44] Using an average VSL of $5.5 million, all alternatives show large average annual benefits relative to annual costs with Alternative 5 yielding the highest net benefits.

TABLE 28—AVERAGE COST-EFFECTIVENESS AND NET BENEFITS OF POTENTIAL LIVES SAVED—POP NUTRITION INFORMATION 50 PERCENT AS SUCCESSFUL AS ON-PACKAGE NUTRITION LABEL INFORMATION

Alternatives	Potential lives saved	Cost/life saved 7%	Value of lives saved	Net benefit 7%
		$ million		
Alternative 2. POP manuals for all products:				
Total	28.4	.291	156.3	150.0
Ground/chopped	5.7	.046	31.3	31.0
Major cuts	19.4	.047	106.5	105.6
Nonmajor cuts	3.4	2.112	18.5	11.4
Alternative 3. On-package labels for ground and chopped, POP placards for major cuts:				
Total	30.7	1.069	169.0	136.2
Ground/chopped	11.4	2.633	62.5	32.6
Major cuts	19.4	.151	106.5	103.6

[43] This value reflects the relative success of POP nutrition information relative to on-package labels. This value will change according to the scenario being discussed.

[44] The analysis assumes that the manual containing the nutrition information as specified for Alternative 2 and the POP nutrition information placards specified in Alternative 3 have the same impact on consumer dietary patterns. The use of a nutrition information reference manual is assumed to be the manner by which retail establishments would convey nutrition information under Alternative 2.

TABLE 28—AVERAGE COST-EFFECTIVENESS AND NET BENEFITS OF POTENTIAL LIVES SAVED—POP NUTRITION INFORMATION 50 PERCENT AS SUCCESSFUL AS ON-PACKAGE NUTRITION LABEL INFORMATION—Continued

Alternatives	Potential lives saved	Cost/life saved 7%	Value of lives saved	Net benefit 7%
Alternative 4. On-package labels for ground and chopped products and major cuts:				
Total	50.1	1.532	275.6	198.8
Ground/chopped	11.4	2.633	62.5	32.6
Major cuts	38.7	1.209	213.4	166.2
Alternative 5. On-package labels for all products:				
Total	56.8	1.589	312.6	222.3
Ground/chopped	11.4	2.633	62.5	32.6
Major cuts	27.8	1.628	153.1	106.3
Nonmajor cuts	10.9	1.202	59.9	46.4

Note: These estimates do not take into account the level of voluntary compliance with the labeling required under each alternative. Consequently, the estimated compliance costs as well as potential lives saved are overstated.

Tables 29 and 30 show the impact on the cost effectiveness of Alternatives 2 and 3, and their respective measures, when POP nutrition information is 10 and 5 percent as successful, respectively, as on-package nutrition labels in leading to dietary changes. The cost effectiveness of Alternatives 4 and 5 are not affected as they do not employ POP nutrition information. Consequently, their effectiveness ratios and net benefits are unchanged from Table 28.

The results show that as the success of POP nutrition information declines relative to on-package nutrition labels, the cost-effectiveness measures for Alternative 2 decline more rapidly than those for Alternative 3, given the second alternative's entire reliance on POP nutrition information. When POP nutrition information is 10 percent as successful as on-package nutrition information labels (Table 29), the average cost-effectiveness for Alternatives 2 through 5 are approximately the same (between $1.5 to $2.2 million per life saved). While the average cost-effectiveness ratios of the regulatory alternatives are approximately the same, the annual net benefits of the alternatives differ significantly. This measure ranges from $23 million for Alternative 2 to 10 times that amount for Alternative 5 (Table 26). It should be noted that the cost per life saved associated with POP nutrition information for nonmajor cuts of single ingredient, raw meat and poultry products under Alternative 2 exceeds the value of a life saved and, consequently, the annual benefits associated with the measure are less than the annual costs.

TABLE 29—AVERAGE COST-EFFECTIVENESS AND NET BENEFITS OF POTENTIAL LIVES SAVED —POP NUTRITION INFORMATION 10 PERCENT AS SUCCESSFUL AS ON-PACKAGE NUTRITION LABEL INFORMATION

Alternatives	Potential lives saved	Cost/life saved 7%	Value of lives saved	Net benefit 7%
		$ Million		
Alternative 2. POP manuals for all products:				
Total	5.7	1.457	31.3	23.0
Ground/chopped	1.1	.232	6.3	6.0
Major cuts	3.9	.236	21.3	20.4
Nonmajor cuts	0.7	10.562	3.7	−3.4
Alternative 3. On-package labels for ground and chopped, POP placards for major cuts:				
Total	15.2	2.156	83.8	51.0
Ground/chopped	11.4	2.633	62.5	32.6
Major cuts	3.9	.757	21.3	18.4

Note: These estimates do not take into account the level of voluntary compliance with the labeling required under each alternative. Consequently, the estimated compliance costs as well as potential lives saved are overstated.

When POP nutrition information is 5 percent as successful as on-package nutrition information labels (Table 30), the average cost-effectiveness ratio for Alternative 2 is higher than those for the other alternatives and 15 percent higher than that for Alternative 3. The annual net benefit of POP nutrition information for ground or chopped product under Alternative 2 is declining to marginal levels. The annual net benefit for Alternative 3 is nearly $40.3 million, about 5 times that for Alternative 2.

Due to the differences in search costs for consumers using a POP reference manual versus a POP placard, Alternative 2 is expected to be less successful than Alternative 3 in changing dietary patterns. If POP manuals were 5 percent as successful as on-package labels and placards were 10 percent as effective as on-package labels, a plausible scenario, the cost per life saved for Alternative 3 would be about 75 percent (2.156/2.915) of that for Alternative 2. The number of lives saved annually under Alternative 3 would be about 5 times (15.2/2.8) that found under Alternative 2. The uncertainty associated with the success of a POP reference manual (Alternative 2) is an important factor supporting the effectiveness of Alternative 3 and the Agency's decision to select this alternative relative to Alternative 2.

TABLE 30—AVERAGE COST-EFFECTIVENESS AND NET BENEFITS OF POTENTIAL LIVES SAVED—POP NUTRITION INFORMATION 5 PERCENT AS SUCCESSFUL AS ON-PACKAGE NUTRITION LABEL INFORMATION

Alternatives	Potential lives saved	Cost/life saved	Value of lives saved	Net benefit
		$ million		
Alternative 2. POP manuals for all products:				
Total	2.8	2.915	15.63	7.4
Ground/chopped	0.6	.464	3.13	2.9
Major cuts	1.9	.472	10.70	9.7
Nonmajor cuts	0.3	21.125	1.85	−5.3
Alternative 3. On-package labels for ground and chopped, POP placards for major cuts:				
Total	13.3	2.470	73.16	40.3
Ground/chopped	11.4	2.633	62.51	32.59
Major cuts	1.9	1.514	10.65	7.72

Note: These estimates do not take into account the level of voluntary compliance with the labeling required under each alternative. Consequently, the estimated compliance costs as well as potential lives saved are overstated.

Summary of Analysis of Alternatives

The analysis shows that the POP information does not need to be highly successful for its benefits to exceed its costs, even at low levels of success relative to on-package nutrition labels.

FSIS finds that the measures required in the supplemental proposed rule are generally more effective than the other alternatives when all the qualitative and quantitative evidence is considered. As has been discussed above in this section, FSIS finds that on-package nutrition labels for ground or chopped product are more effective than POP nutrition information in informing consumers about the nutritional characteristics of these products, given the nature of the product, its presentation in the retail environment, and consumer behavior. FSIS also finds that POP nutrition placards are an effective means for informing consumers about the nutritional characteristics of major cuts of single ingredient, raw products for these same reasons.

F. Summary of Costs and Benefits of the Final Nutrition Labeling Rule

FSIS estimates that for the supplemental proposed rule, the discounted average present value of benefits over a 20-year period using a 7 percent discount rate will be $2.2 billion and using a 3 percent discount rate will be $3.7 billion, using a composite of three scenarios for the effectiveness of nutrition labels and three values for reducing a premature death. The corresponding average annual benefits are $205.5 million and $248.3 million (*See* summary Table 30b).

The discounted average present value costs, over a 20-year period, are estimated to be $348.06 million using a 7 percent discount rate and $472.23 million using a 3 percent discount rate. The corresponding annualized average costs are $32.8 and $31.7 million (*See* summary table 30b and Appendix D, Tables 1 and 2).

After taking into account the current assumed levels of compliance with the supplemental proposed rule measures, the average present value costs of the rule decline to $115.45 million and $156.72 million when using a 7 percent and 3 percent discount rate, respectively. The corresponding annualized average costs are $10.9 and $10.5 million. The average present values of the benefits are $0.800 billion and $1.358 billion using 7 and 3 percent discount rates, respectively. The corresponding average annual benefits are $75.5 million and $91.3 million. Table 30c provides a summary of these annualized costs and benefits. These estimates suggest that under plausible assumptions, the impact of this rule in any given year may be less than $100 million. However, given the uncertainties in the analysis, this action is deemed ''economically significant''.

Not included in the quantitative analysis were other likely benefits to providing nutrition labeling: increased profits received by food retailers and manufacturers, and consumers buy products with the attributes they want. FSIS believes that the labeling provisions help consumers make better food choices and provide incentives to producers to continue producing nutritionally-improved products that contribute substantially to the health benefits associated with nutrition labeling. If diet quality associations found with all other labeled foods do not hold up for nutrition labels on meat, then health benefits in the FSIS report are overestimated. Of course, health benefits are only one way in which benefits might be realized. Consumers might choose to use nutritional information to enhance enjoyment of food, and not to raise their health status. Further, they may be better off than if they had raised their health status since rational consumers will use information to their best advantage. If we observe rational, well-informed consumers selecting a more enjoyable diet, for these consumers a more enjoyable diet was worth more than better health. Thus, when we restrict benefits estimates to allow only for information to be used to advance health status, we are simultaneously restricting estimated benefits to a lower level of value to consumers. The FSIS analysis imposes that restriction and the resulting benefits estimate must therefore be interpreted as an underestimate of overall benefits. The estimated costs of the rule's nutrition labeling requirements appear to be justified by the estimated benefits.

TABLE 30b—SUMMARY OF ANNUALIZED AVERAGE NET PRESENT VALUES OF COSTS AND BENEFITS, BEFORE ACCOUNTING FOR LEVELS OF CURRENT COMPLIANCE, *$million/year*

Category	*Primary estimate*	*Low estimate*	*High estimate*	*Units*		
				Year dollars	*Discount (percent)*	*Period covered*
Benefits:						
Annualized	*205.5*	*185.6*	*230.8*	*2002*	*7*	*20 years.*
Monetized $million/year*	*248.3*	*228.4*	*273.6*	*2002*	*3*	*20 years.*
Qualitative:	*Consumers might also choose to use nutritional information to enhance enjoyment of food, and not just to raise their health status.*					
Costs:						
Annualized	*32.8*	*26.7*	*44.8*	*2002*	*7*	*20 years.*
Monetized $million/year*	*31.7*	*25.6*	*43.7*	*2002*	*3*	*20 years.*

Notes: * Monetized benefits of potential lives saved.
Note: These estimates do not take into account the level of voluntary compliance with the nutrition labeling requirements for ground or chopped products that currently exists. Consequently, the estimated amounts of ground or chopped products and major cuts impacted by this supplemental proposed rule are overstated. Consequently, the estimated compliance costs as well as the monetized benefits of potential lives saved are overstated.

TABLE 30c—SUMMARY OF ANNUALIZED AVERAGE NET PRESENT VALUES OF COSTS AND BENEFITS, AFTER ACCOUNTING FOR ASSUMED LEVELS OF CURRENT COMPLIANCE, *$million/year*

Category	*Primary estimate*	*Low estimate*	*High estimate*	*Units*		
				Year dollars	*Discount (percent)*	*Period covered*
Benefits:						
Annualized	*75.5*	*68.1*	*84.8*	*2002*	*7*	*20 years.*
Monetized $million/year*	*91.3*	*83.9*	*100.6*	*2002*	*3*	*20 years.*
Qualitative:	*Consumers might also choose to use nutritional information to enhance enjoyment of food, and not just to raise their health status.*					
Costs:						
Annualized	*10.9*	*8.9*	*14.7*	*2002*	*7*	*20 years.*
Monetized $million/year*	*10.5*	*8.6*	*14.4*	*2002*	*3*	*20 years.*

Notes: * Monetized benefits of potential lives saved.
Note: These estimates take into account the level of voluntary compliance with the nutrition labeling requirements for ground or chopped products that currently exists—the 68 percent compliance rate (NCBA, 2004) of voluntary nutrition labeling of ground or chopped products and 54.8 percent level of voluntary compliance (USDA, 1999) of stores that provide nutrition labeling for major cuts.

Regulatory Flexibility Act (RFA)—Assessment

Based on the cost analysis above, FSIS has made a tentative determination that this rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The supplemental proposed rule would affect meat and poultry processing establishments producing ground or chopped products (Table 1 and 2) and retail firms and establishments (Tables 3 and 4). There are approximately 3,073 potentially affected Federal and State processing establishments and 47,688 potentially affected retail firms with 74,910 retail establishments. A ''firm'' refers to the parent company and an ''establishment'' refers to the retail facility. Processing establishments that grind or chop meat and poultry will be potentially affected. There are 1,433 very small, 858 small, and 109 large Federal establishments that produce ground or chopped products, based on PBIS (April, 2006). The final regulatory analysis assumes that no small processor is independent. That is, all (regardless of their size) are part of a larger organization. Table 13 shows the undiscounted costs of about $53.80 million for all the affected processing establishments.

FSIS does not believe that any very small operations will be affected by the regulation because very small meat and poultry operations employ nine or fewer employees. These establishments would find it difficult to produce over 100,000 pounds per ground product annually because these employees also process other products. Annual revenues associated with 100,000 pounds of annual ground beef total approximately $230,000 for 85 percent lean ground beef, based on a retail value of $2.30 per pound (Agricultural Marketing Service, Market Reports, September 2009). Some small establishments are also likely to be exempt from the regulation because they have 500 or fewer employees, or are owned by companies with 500 or fewer employees, and FSIS assumes they produce less than 100,000 pounds annually of each ground product. FSIS researched this issue to better address the number of establishments that would be affected but does not have better data on corporations that own these individual establishments. However, as discussed earlier in the final regulatory analysis, RTI made the assumption that Federally-inspected processing establishments generally are a part of a larger organization that own, on average, three establishments each. In addition, based on PBIS (April 2006), there are 41 state-inspected processing establishments (Table 2) that are owned by 41 firms. Therefore, there are about 899 (858 + 41) small processing establishments that are affected by the supplemental proposed rule.

As part of the Regulatory Flexibility Assessment, FSIS also examined the impact of the supplemental proposed rule, by altering certain assumptions, to

determine whether the supplemental proposed rule could have a significant impact on a substantial number of small entities. Therefore, even though FSIS believes that small processors would find it difficult to produce over 100,000 pounds per ground product annually because these employees also process other products, FSIS estimated the cost to small grinders if they were not exempt from nutrition labeling requirements. For purposes of this alternative analysis, it is assumed that all 899 small processing firms will be affected by this regulation.[45] Also, based on the analysis for the supplemental proposed rule, there are 6.6 frozen or fresh ground meat or chopped meat and poultry products produced per company. For this alternative analysis, it is assumed that there are 5,933 (899 × 6.6) unique ground or chopped products. FSIS estimates that the one-time average costs of modifying product labels on prepackaged ground or chopped products to include nutrition information at processing establishments will be $13.33 million ($2,247 per label modification costs × 896 affected companies × 6.6 affected products per company) using average cost estimates. The annualized cost over 20 years at 7 percent is $1.26 million. On a per company basis the annualized cost over 20 years is about $1,402 ($1.26 million/896).

In addition to the one-time costs of designing labels, processing establishments will also incur added costs of larger labels. Again, it is assumed that there are 899 small processing establishments that grind or chop meat and poultry, and that all these establishments are small businesses. Based on a study conducted by NCBA, 25 percent of ground or chopped meat and poultry packages are packaged at processing establishments. As explained above, approximately 437.5 million packages of ground and chopped meat and poultry products are packed by processing establishments each year. There are no data available to estimate the number of packages of ground or chopped meat or poultry products packaged by these small establishments, but (for purposes of this analysis) if 25 percent of all of the packages originate at small establishments, then these 899 companies package 109.4 million packages annually (437.5 million × .25). Multiplying 109.4 million packages by 0.5 cents per label (RTI, 2003) results in an annual cost of $547,000 (109.4 million packages × $0.005) or about $509 per company. In total, FSIS estimates that (under the alternative set of assumptions that all small entities will be affected by this supplemental proposed rule and that they package 25 percent of the total) the cost to these 899 small companies (assuming that they package 25 percent of the total) will be about $1,616 ($1,107 + $509) per company on an annualized basis using a 7 percent discount rate.

If, on the other hand, 50 percent of all packages from processing establishments originate at the small establishments, then these 899 companies package about 219 million packages annually. Multiplying 219 million packages by $0.005 per label results in an annual cost of $1,095,000 or $1,218 per company. In total, FSIS estimates that the cost to 899 small companies (under the alternative set of assumptions that all small entities will be affected by this supplemental proposed rule and that they package 50 percent of the total) will be about $2,126 per company ($1,402 + $1,218) on an annualized basis discounted at 7 percent.

Small retail stores will incur the cost of providing POP nutrition information for the major cuts. There are 47,422 small retail firms that own 51,431 small retail stores that would be required to provide POP information for the major cuts of single-ingredient, raw products. FSIS estimates that the cost to a retail store for placards will be $10.56 for labor plus $65.17 for materials or approximately $75.73 per store. The annualized cost, assuming that the placards have to be replaced every two years, is about $41.88 using a 7 percent discount rate. All retail stores, including small and very small businesses will incur these costs. FSIS believes that these costs are not significant—even for very small businesses.

Retail stores will also incur costs related to required nutrition labels for ground or chopped products. For this analysis, it is assumed that they will all comply by following Option 1 (the less costly printing method for labels) because it is the least costly. Based upon the information contained in the regulatory analysis, a total of 74,910 establishments owned by 47,688 firms could potentially be affected. However, 23,479 establishments owned by 266 firms are considered to be large according to the 2002 Economic Census. If they grind or chop over 100,000 pounds of a particular product annually, then as many as 51,431 small establishments owned by 47,422 firms could potentially be affected.[46]

For these establishments, it is assumed that there would be only one scale-printer system instead of the 1.5 scale-printer systems that was assumed in the regulatory analysis. Therefore, the average cost of upgrading scale-printer systems is estimated at $1,600, and this cost would be incurred by these businesses once every five years. FSIS estimates that the annualized cost, since scale-printer systems need to be replaced every 5 years, is about $390 using a 7 percent discount rate. Operating and maintenance costs are estimated at 6 percent (*See* supplemental PRIA for detailed explanation) or $96 annually. Therefore, the sum of the annualized maintenance costs at 7 percent is estimated at $486 annually per establishment ($390 + $96).

The average cost of redesigning larger store labels and conducting nutrition analysis is estimated at $2,247. However, many firms have more than one establishment so the cost per establishment will be much lower. Assuming that each establishment had to redesign its store labels for 4.6 products and conduct nutrition analysis for each unique product, then the added annualized cost over 20 years is estimated at $766 using a 7 percent discount rate.

The use of larger labels is another cost that these retail stores will incur. As explained above, an estimated 1.75 billion packages of ground or chopped meat or poultry products are sold at large retail facilities. Therefore, 460 million packages of ground or chopped products are sold at small retail establishments. Given that 51,431 small retail establishments could be affected, then each small establishment (460 million packages/51,431 establishments) sells 8,039 packages annually. If the added average cost of each label is $0.005, then each retail store will incur an added cost of about $40 annually ($8,039 packages per establishment × .005).

FSIS estimates that using a 7 percent discount rate the sum of the annual/annualized cost to each retail establishment will be $42 for nutrition information placards, $486 for upgrading and maintaining scale-printer systems, $969 for redesigning larger store logo labels, and $40 for using larger labels. The total annual/

[45] Although RTI, in their analysis stated that all of these businesses are large, for this analysis, FSIS is altering the assumption in order to determine the impact (measure the sensitivity) of a set of alternative assumptions.

[46] RTI believes that all of these businesses will be exempt from nutrition labeling requirements. For purposes of conducting a sensitivity analysis, this analysis assumes that they are small for purposes of the Regulatory Flexibility Act and that they will not qualify for the small business exemption.

annualized cost using a 7 percent discount rate will be $1,537. FSIS also estimates that using a 3 percent discount rate the total annual/annualized cost using a 3 percent discount rate will be $1,216. In summary, FSIS concludes from using an alternate set of assumptions, that this supplemental proposed rule would not have a significant impact on a substantial number of small entities.

FSIS is cognizant of the possibility that while exempted establishments would not have to incur labeling costs, they also might not realize the benefits of increased sales of the nutritionally labeled products. This is because if demand for the labeled product increases relative to demand for non-labeled products, the exempt establishments would lose their market shares to the nonexempt establishments producing nutritionally labeled products. Therefore, to keep their market shares, these exempt establishments are likely to voluntarily include nutrition information on the product label. Such a strategy would minimize any adverse impact on these smaller establishments. It would, however, also increase their labeling costs. Economic theory dictates that these establishments would compare the costs of nutrition labels with the benefits of retaining their market shares and would decide to label their products if the benefits of increasing the market shares exceed the label costs.

Nutrition labeling would be required, either on the product label or on POP materials, for the major cuts. Therefore, if manufacturers do not provide nutrition information on the label, retailers would be required to provide this information at the POP or on product labels. However, as noted above, this requirement should not impose major costs or other burdens. The annual/annualized cost to each retail establishment will be $42 for nutrition information placards.

The economic impact on retail stores is likely to be minimal because recently there has been consolidation of these stores as a consequence of mergers and acquisitions, resulting in an increased market share of large retailers relative to small ones. For example, several years ago Royal Ahold, the Dutch Conglomerate, bought out Giant Food. Also, Ahold announced the pending purchase of Supermarket General-II Holdings Corporation, parent of the Pathmark chain. Similarly, SUPERVALUE acquired Richfood, Food Lion bought out Hannaford Brothers and Scarborough, and Albertson's purchased American Stores. (Sean Mehegan, ''Consolidation Changes the Face of the North American Supermarket Sector,'' *Meat & Poultry* (September 1999): 22–25). More recently, Wal-Mart through its operation Wal-Mart Puerto Rico agreed to acquire Supermercados Amigo, the leading supermarket chain in Puerto Rico. These mergers and acquisitions are likely to increase market shares of the large retailers at the cost of smaller ones.

Based on the 2002 Economic Census of the U.S. Department of Commerce, meat and poultry processing establishments that are small entities had annual revenues from total value of shipments that ranged from $0.454 million to $96.038 million. For each processing (grinding) establishment, average costs as a percent of revenues range from a lower bound of 0.001 percent ($1,402/$96.038 million to an upper bound of 0.3 percent ($1,402/$0.454 million). Further, small entity retail stores (supermarkets and other grocery (except convenience) stores and meat market stores) had annual revenues from sales that ranged from $0.343 million to $8.873 million. Also, the companies or firms of the small retail stores had annual revenues from sales that ranged from $0.343 million to $48.342 million. Costs as a percent of revenues range from the lower bound of 0.02 percent ($1,537/$8.873 million) to the upper bound of 0.4 percent ($1,537/$0.343 million). Many of these retail firms that are small entities own multiple retail stores that are small entity supermarkets and other grocery (except convenience) stores.

The following table shows the upfront, first year costs for all businesses affected by the rule, compared to the first year, upfront costs for small businesses. The table also shows the percent of total first year costs of the rule that will be incurred by small businesses. Based on the cost estimates for the rule, assuming retailers choose Option 1 for labeling ground or chopped products, small businesses will incur 10.1 percent of total estimated first year costs.

TABLE 32—DISTRIBUTION OF FIRST YEAR COSTS—3 PERCENT DISCOUNT RATE

	Option 1 retail	Option 2 retail	Processing plant	Option 1 retail + processing plant	Option 2 retail + processing plant	Option 1 retail	Option 2 retail	Processing plant	Option 1 retail + processing plant	Option 2 retail + processing plant
	$ Million					$ Million—Present value				
All entities	61.88	39.88	6.00	67.88	45.88	60.09	38.72	5.83	65.91	44.55
Only small entities	2.84	2.84	3.98	6.82	6.82	2.76	2.76	3.86	6.62	6.62
	Percent									
Small entitles share of total costs	4.59	7.12	66.33	10.05	14.86	4.59	7.12	66.33	10.05	14.86

TABLE 33—DISTRIBUTION OF FIRST YEAR COSTS—7 PERCENT DISCOUNT RATE

	Option 1 retail	Option 2 retail	Processing plant	Option 1 retail + processing plant	Option 2 retail + processing plant	Option 1 retail	Option 2 retail	Processing plant	Option 1 retail + processing plant	Option 2 retail + processing plant
	$ Million					$ Million—Present value				
All Entities	61.88	39.88	6.00	67.88	45.88	57.86	37.29	5.61	63.47	42.90

TABLE 33—DISTRIBUTION OF FIRST YEAR COSTS—7 PERCENT DISCOUNT RATE—Continued

	Option 1 retail	Option 2 retail	Processing plant	Option 1 retail + processing plant	Option 2 retail + processing plant	Option 1 retail	Option 2 retail	Processing plant	Option 1 retail + processing plant	Option 2 retail + processing plant
Only small entities ...	2.84	2.84	3.98	6.82	6.82	2.66	2.66	3.72	6.38	6.38
	Percent									
Small entitles share of total costs	4.59	7.12	66.33	10.05	14.86	4.59	7.12	66.33	10.05	14.86

Executive Order 12988

This supplemental proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on Federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. However, States and local jurisdictions may exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States.

The supplemental proposed rule would not be intended to have retroactive effect.

Administrative proceedings would not be required before parties may file suit in court challenging this rule. However, the administrative procedures specified in §§ 306.5 and 381.35 must be exhausted before there is any judicial challenge of the application of the rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under FMIA and PPIA.

Paperwork Requirements

Title: Nutrition labeling of ground or chopped meat and poultry products and single-ingredient products.

Type of Collection: New.

Abstract: FSIS has reviewed the paperwork and record keeping requirements in this supplemental proposed rule in accordance with the Paperwork Reduction Act. Should this rule become final, FSIS will require several information collection and recordkeeping activities. FSIS will requiring nutrition labeling on the major cuts of single-ingredient, raw meat and poultry products, either on their label or at their POP, unless an exemption applies. If the manufacturer provides nutrition information on the label of individual packages of the major cuts of single-ingredient, raw meat or poultry products, the retailer would not be required to provide the information at the POP. However, if the manufacturer does not provide the nutrition information on the label of these products, the retailer would be required to provide the information at their POP. In the estimate of burden below, FSIS is calculating that all retailers would display POP information for the major cuts of single-ingredient, raw meat and poultry products, because this is a low-cost means of providing nutrition information for multiple products, and because this rule will not require that manufacturers include nutrition labels on the major cuts of single-ingredient, raw meat and poultry products. FSIS is also requiring nutrition labels on all ground or chopped meat and poultry products, with or without added seasonings, unless an exemption applies.

Estimate of burden: FSIS estimates that obtaining POP materials and making them available for consumers would take an average of 30 minutes. FSIS believes that the nutrition information on most POP materials will be based on the most current representative database values contained in USDA's National Nutrient Data Bank or the USDA National Nutrient Database for Standard Reference. FSIS also believes it is unlikely that there will be any nutrition claims made on the POP materials on the basis of the representative data base values. Therefore, these products will not be subject to FSIS compliance review, and there will be no recordkeeping requirements based on this information.

FSIS estimates that developing nutrition labels for ground or chopped products would take an average of 6 hours. Labels developed at official establishments would be submitted to FSIS. FSIS estimates that each official establishment that produces ground or chopped product would submit 6.6 labels to FSIS for approval. FSIS estimates that it would take an average of 1.5 hours to prepare and submit the form for prior approval. All ground or chopped product would be subject to FSIS compliance review; therefore, producers of ground or chopped product would be required to maintain records to support the validity of nutrient declarations contained on product labels. FSIS estimates the average time for recordkeeping would be 30 minutes.

Respondents: Meat and poultry establishments and retail stores.

Estimated number of respondents: 75,539.

Estimated number of responses per respondent: 18.04.

Estimated total annual burden on respondents: 66,062 hours

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 112 Annex, 300 12th St., Washington, DC 20250. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs,

Office of Management and Budget, Washington, DC 20253.

To be most effective, comments should be sent to OMB within 60 days of the publication date of this supplemental proposed rule.

E-Government Act Compliance

FSIS 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.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this supplemental proposed rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/2009_Proposed_Rules_Index/index.asp*. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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Section III

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat Inspection, Nutrition, Reporting and recordkeeping requirements.

9 CFR Part 381

Food labeling, Food packaging, Nutrition, Poultry and poultry products, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FSIS is proposing to amend 9 CFR Chapter III, as follows:

PART 317—LABELING, MARKING DEVICES AND CONTAINERS

1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C 601–695; 7 CFR 2.18, 2.53.

2. Section 317.300 is revised to read as follows:

§ 317.300 Nutrition labeling of meat and meat food products.

(a) Unless the product is exempted under § 317.400, nutrition labeling must be provided for all meat and meat food products intended for human consumption and offered for sale, except single-ingredient, raw products that are not ground or chopped products described in § 317.301 and are not major cuts of single-ingredient, raw meat products identified in § 317.344. Nutrition labeling must be provided for the major cuts of single-ingredient, raw meat products identified in § 317.344, either in accordance with the provisions of § 317.309 for nutrition labels, or in accordance with the provisions of § 317.345 for POP materials, except as exempted under § 317.400. For all other products for which nutrition labeling is required, including ground or chopped meat products described in § 317.301, nutrition labeling must be provided in accordance with the provisions of § 317.309, except as exempted under § 317.400.

(b) Nutrition labeling may be provided for single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301 and that are not major cuts of single-ingredient, raw meat products identified in § 317.344, either in accordance with the provisions of § 317.309 for nutrition labels, or in accordance with the provisions of § 317.345 for point-of-purchase materials.

3. A new § 317.301 is added to read as follows:

§ 317.301 Required nutrition labeling of ground or chopped meat products.

(a) Nutrition labels must be provided for all ground or chopped products (livestock species) and hamburger with or without added seasonings (including, but not limited to, ground beef, ground beef patties, ground sirloin, ground pork, and ground lamb) that are intended for human consumption and offered for sale, in accordance with the provisions of § 317.309, except as exempted under § 317.400.(b). [Reserved]

4. Section 317.309 is amended as follows:

a. In paragraph (b)(3), the first sentence is amended by adding ''that are not ground or chopped meat products described in § 317.301'' after the phrase ''single-ingredient, raw products'', and by removing ''as set forth in § 317.345(a)(1)''; the second sentence is amended by adding, ''that are not ground or chopped meat products described in § 317.301'' after the phrase ''single-ingredient, raw products'', and the following new sentence is added after the first sentence: ''For single-ingredient, raw products that are not ground or chopped meat products described in § 317.301, if data are based on the product 'as consumed,' the data must be presented in accordance with § 317.345(d).''

b. Paragraph (b)(10) is amended by adding the following new sentence at the end of the paragraph: ''The declaration of the number of servings per container need not be included in nutrition labeling of single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301, including those that have been previously frozen.''

c. Paragraph (b)(11) is amended by adding the phrase ''single-ingredient, raw products that are not ground or chopped meat products described in § 317.301 and'' after ''exception of''.

d. Paragraph (d)(3)(ii) is amended by removing the period and adding ''or on single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301.'' at the end of the paragraph.

e. Paragraph (e)(3) is amended by adding '', but may be on the basis of as consumed for single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301,'' after ''as packaged''.

f. Paragraph (h)(9) is amended by removing the phrase ''(including ground beef)'', by adding, ''that are not ground or chopped meat products described in § 317.301'' after ''products'', by removing the phrase, ''its published form, the Agriculture Handbook No. 8 series available from the Government Printing Office'', and by adding, in its place, ''its released form, the USDA National Nutrient Database for Standard Reference'', and by removing the period and adding the following at the end of the paragraph: as provided in § 317.345(e) and (f).''

§ 317.343 [Amended]

5. Section 317.343 is removed.

6. Section 317.344 is amended by removing the phrases ''ground beef regular without added seasonings, ground beef about 17% fat,'' and ''ground pork.''

7. Section 317.345 is amended as follows:

a. The section heading and paragraphs (a) and (c) are revised.

b. Paragraph (d) is amended by removing ''should'' and adding, in its place, ''for products covered in paragraphs (a)(1) and (a)(2) must''.

c. Paragraph (e) is amended by removing ''its published form, the Agriculture Handbook No. 8 series'' and by adding, in its place, ''its released form, the USDA National Nutrient Database for Standard Reference'', and by removing ''(including ground beef)''.

d. Paragraph (f) is amended by adding ''provided'' after ''nutrition information is''.

e. Paragraph (g) is amended by removing the phrase ''(including ground beef)''.

The revisions read as follows:

§ 317.345 Nutrition labeling of single-ingredient, raw meat products that are not ground or chopped products described in § 317.301.

(a)(1) Nutrition information on the major cuts of single-ingredient, raw meat products identified in § 317.344, including those that have been previously frozen, is required, either on their label or at their point-of-purchase, unless exempted under § 317.400. If nutrition information is presented on the label, it must be provided in accordance with § 317.309. If nutrition information is presented at the point-of-purchase, it must be provided in accordance with the provisions of this section.

(2) Nutrition information on single-ingredient, raw meat products that are not ground or chopped meat products described in § 317.301 and are not major cuts of single-ingredient, raw meat products identified in § 317.344, including those that have been previously frozen, may be provided at their point-of-purchase in accordance with the provisions of this section or on their label, in accordance with the provisions of § 317.309.

(3) A retailer may provide nutrition information at the point-of-purchase by various methods, such as by posting a sign or by making the information readily available in brochures, notebooks, or leaflet form in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. If a nutrition claim is made on point-of-purchase materials, all of the format and content requirements of § 317.309 apply. However, if only nutrition information—and not a nutrition claim—is supplied on point-of-purchase materials, the requirements of § 317.309 apply, provided, however:

(i) The listing of percent of Daily Value for the nutrients (except vitamins and minerals specified in § 317.309 (c)(8)) and footnote required by § 317.309(d)(9) may be omitted; and

(ii) The point-of-purchase materials are not subject to any of the format requirements.

* * * * *

(c) For the point-of-purchase materials, the declaration of nutrition information may be presented in a simplified format as specified in § 317.309(f).

* * * * *

8. Section 317.362 is amended by adding a new paragraph (f) to read as follows:

§ 317.362 Nutrient content claims for fat, fatty acids, and cholesterol content.

* * * * *

(f) A statement of the lean percentage may be used on the label or in labeling of ground or chopped meat products described in § 317.301 when the product does not meet the criteria for ''low fat,'' defined in § 317.362(b)(2), provided that a statement of the fat percentage is contiguous to and in lettering of the same color, size, type, and on the same color background, as the statement of the lean percentage.

9. Section 317.400 is amended by:

a. Revise paragraph (a)(1) introductory text.

b. Paragraph (a)(1)(ii) is amended by adding '', including a single retail store,'' after the phrase ''single-plant facility,'' and by adding, '', including a multi-retail store operation,'' after ''company/firm''.

c. Paragraph (a)(7)(i) is amended by removing the semi-colon and ''and'' and by adding the following at the end of the paragraph:

'', provided, however, that this exemption does not apply to ready-to-eat ground or chopped meat products described in § 317.301 that are packaged or portioned at a retail establishment, unless the establishment qualifies for an exemption under (a)(1);''.

d. Paragraph (a)(7)(ii) is amended by removing the period and by adding the following at the end of the paragraph:

'', provided, however, that this exemption does not apply to multi-ingredient ground or chopped meat products described in § 317.301 that are processed at a retail establishment, unless the establishment qualifies for an exemption under (a)(1); and''

e. Add a new paragraph (a)(7)(iii).

f. Paragraph (d)(1) is amended by removing the period at the end of the first sentence, and by adding the following to the end of the first sentence: '', except that this exemption does not apply to the major cuts of single-ingredient, raw meat products identified in § 317.344.''

The revision and addition read as follows:

§ 317.400 Exemption from nutrition labeling.

(a) * * *

(1) Food products produced by small businesses, other than the major cuts of single-ingredient, raw meat products identified in § 317.344 produced by small businesses, provided that the labels for these products bear no nutrition claims or nutrition information, and ground or chopped products described in § 317.301 produced by small businesses that bear a statement of the lean percentage and fat percentage on the label or in labeling in accordance with § 317.362(f), provided that labels or labeling for these products bear no other nutrition claims or nutrition information,

* * * * *

(7) * * *

(iii) Products that are ground or chopped at an individual customer's request.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

10. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

11. Section 381.400 is revised to read as follows:

§ 381.400 Nutrition labeling of poultry products.

(a) Unless the product is exempted under § 381.500, nutrition labeling must be provided for all poultry products intended for human consumption and offered for sale, except single-ingredient, raw products that are not ground or chopped products described in § 381.401 and are not major cuts of single-ingredient, raw poultry products identified in § 381.444. Nutrition labeling must be provided for the major cuts of single-ingredient, raw poultry products identified in § 381.444, either in accordance with the provisions of § 381.409 for nutrition labels, or in accordance with the provisions of § 381.445 for point-of-purchase materials, except as exempted under § 381.500. For all other products that require nutrition labeling, including ground or chopped poultry products described in § 381.401, nutrition labeling must be provided in accordance with the provisions of § 381.409, except as exempted under § 381.500.

(b) Nutrition labeling may be provided for single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401 and that are not major cuts of single-ingredient, raw poultry products identified in § 381.444, either in accordance with the provisions of § 381.409 for nutrition labels, or in accordance with the provisions of § 381.445 for point-of-purchase materials.

12. A new § 381.401 is added to read as follows:

§ 381.401 Required nutrition labeling of ground or chopped poultry products.

Nutrition labels must be provided for all ground or chopped poultry (kind) with or without added seasonings (including, but not limited to, ground chicken, ground turkey, and (kind) burgers) that are intended for human consumption and offered for sale, in accordance with the provisions of § 381.409, except as exempted under § 381.500.

13. Section 381.409 is amended as follows:

a. Revise paragraph (b)(3).

b. Paragraph (b)(10) is amended by adding the following new sentence at the end of the paragraph: ''The declaration of the number of servings per container need not be included in nutrition labeling of single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401, including those that have been previously frozen.''

c. Paragraph (b)(11) is amended by adding the phrase ''single-ingredient, raw products that are not ground or chopped poultry products described in § 381.401 and'' after ''exception of''.

d. Paragraph (d)(3)(ii) is amended by removing the period and adding ''or on single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401.'' at the end of the paragraph.

e. Paragraph (e)(3) is amended by adding '', but may be on the basis of ''as consumed'' for single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401,'' after ''as packaged''.

f. Paragraph (h)(9) is amended by adding, ''that are not ground or chopped poultry products described in § 381.401'' after ''products'', by removing the phrase, ''its published form, the Agriculture Handbook No. 8 series'', and by adding, in its place, ''its released form, the USDA National Nutrient Database for Standard Reference'', and by removing the period and adding the following at the end of the paragraph: '', as provided in § 381.445(e) and (f).''

The revision reads as follows:

§ 381.409 Nutrition label content.

* * * * *

(b) * * *

(3) The declaration of nutrient and food component content shall be on the basis of the product ''as packaged'' for all products, except that single-ingredient, raw products that are not ground or chopped poultry products as described in § 381.401 may be declared on the basis of the product ''as consumed.'' For single-ingredient, raw products that are not ground or chopped poultry products described in § 381.401, if data are based on the product ''as consumed,'' the data must be presented in accordance with § 381.445(d). In addition to the required declaration on the basis of ''as packaged'' for products other than single ingredient, raw products that are not ground or chopped poultry products as described in § 381.401, the declaration may also be made on the basis of ''as consumed,'' provided that preparation and cooking instructions are clearly stated.

* * * * *

§ 381.443 [Removed]

14. Section 381.443 is removed.

15. Section 381.445 is amended as follows:

a. The section heading and paragraph (a) and (c) are revised.

b. Paragraph (d) is amended by removing ''should'' and adding, in its place, ''for products covered in paragraphs (a)(1) and (a)(2) must''.

c. Paragraph (e) is amended by removing ''its published form, the Agriculture Handbook No. 8 series'' and by adding, in its place, ''its released form, the USDA National Nutrient Database for Standard Reference.''

d. Paragraph (f) is amended by adding ''provided'' after ''nutrition information is''.

The revisions read as follows:

§ 381.445 Nutrition labeling of single-ingredient, raw poultry products that are not ground or chopped products described in § 381.401.

(a)(1) Nutrition information on the major cuts of single-ingredient, raw poultry products identified in § 381.444, including those that have been previously frozen, is required, either on their label or at their point-of-purchase, unless exempted under § 381.500. If nutrition information is presented on the label, it must be provided in accordance with the provisions of § 381.409. If nutrition information is presented at the point-of-purchase, it must be provided in accordance with the provisions of this section.

(2) Nutrition information on single-ingredient, raw poultry products that are not ground or chopped poultry products described in § 381.401 and are not major cuts of single-ingredient, raw poultry products identified in § 381.444, including those that have been previously frozen, may be provided at their point-of-purchase in accordance with the provisions of this section or on their label, in accordance with the provisions of § 381.409.

(3) A retailer may provide nutrition information at the point-of-purchase by various methods, such as by posting a sign or by making the information readily available in brochures, notebooks, or leaflet form in close proximity to the food. The nutrition labeling information may also be supplemented by a video, live demonstration, or other media. If a nutrition claim is made on point-of-purchase materials, all of the format and content requirements of § 381.409 apply. However, if only nutrition information—and not a nutrition claim—is supplied on point-of-purchase materials, the requirements of § 381.409 apply, provided, however:

(i) The listing of percent of Daily Value for the nutrients (except vitamins and minerals specified in § 381.409(c)(8)) and footnote required by § 381.409(d)(9) may be omitted; and

(ii) The point-of-purchase materials are not subject to any of the format requirements.

* * * * *

(c) For the point-of-purchase materials, the declaration of nutrition information may be presented in a simplified format as specified in § 381.409(f).

* * * * *

16. Section 381.462 is amended by adding a new paragraph (f) to read as follows:

§ 381.462 Nutrient content claims for fat, fatty acids, and cholesterol content.

* * * * *

(f) A statement of the lean percentage may be used on the label or in labeling of ground or chopped poultry products described in § 381.401 when the product does not meet the criteria for ''low fat,'' defined in § 381.462(b)(2), provided that a statement of the fat percentage is contiguous to and in lettering of the same color, size, type, and on the same color background, as the statement of the lean percentage.

17. Section 381.500 is amended by:

a. Revising paragraph (a)(1) introductory text.

b. Paragraph (a)(1)(ii) is amended by adding, '', including a single retail store,'' after the phrase ''single-plant facility,'' and by adding '', including a multi-retail store operation'' after ''company/firm''.

c. Paragraph (a)(7)(i) is amended by removing the semi-colon and ''and'' and adding the following at the end of the paragraph: '', provided, however, that this exemption does not apply to ready-to-eat ground or chopped poultry products described in § 381.401 that are packaged or portioned at a retail establishment, unless the establishment qualifies for an exemption under (a)(1);''.

d. Paragraph (a)(7)(ii) is amended by removing the period and adding the following at the end of the paragraph: '', provided, however, that this exemption does not apply to multi-ingredient ground or chopped poultry products described in § 381.401 that are processed at a retail establishment, unless the establishment qualifies for an exemption under (a)(1); and''

e. Add a new paragraph (a)(7)(iii).

f. Paragraph (d)(1) is amended by removing the period at the end of the sentence, and by adding the following to the end of the sentence: ''except that this exemption does not apply to the major cuts of single-ingredient, raw poultry products identified in § 381.444.''

The revision and addition reads as follows:

§ 381.500 Exemption from nutrition labeling.

(a) * * *

(1) Food products produced by small businesses other than the major cuts of single-ingredient, raw poultry products identified in § 381.444 produced by small businesses, provided that the labels for these products bear no nutrition claims or nutrition information, and ground or chopped products described in § 381.401 produced by small businesses that bear a statement of the lean percentage and fat percentage on the label or in labeling in accordance with § 381.462(f), provided that labels or labeling for these products bear no other nutrition claims or nutrition information,

* * * * *

(7) * * *

(iii) Products that are ground or chopped at an individual customer's request.

* * * * *

Done in Washington, DC, on December 3, 2009.

Alfred V. Almanza,

Administrator.

[FR Doc. E9–29323 Filed 12–17–09; 8:45 am]

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