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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Rules and Regulations

Federal Register

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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.

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AI03

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS® System Revision 9

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS® System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 9 to Certificate of Compliance (CoC) Number 1004. Amendment No. 9 will modify the CoC by revising Technical Specifications 1.2.1 and 1.2.14 to add the Framatome-ANP, Version 9x9–2 fuel assemblies as approved contents for storage in the NUHOMS®–61BT dry shielded canister, under the general license provisions of 10 CFR part 72.

DATES: The final rule is effective April 17, 2007, unless significant adverse comments are received by March 5, 2007. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AI03) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comment will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://rulemaking.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the CoC No. 1004, the proposed Technical Specifications (TS), and the preliminary safety evaluation report (SER) for Amendment 9 can be found under ADAMS Accession Nos. ML062830065, ML062830067, and ML062830069.

CoC No. 1004, the proposed TS, the preliminary SER for Amendment No. 9, and the environmental assessment, are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that ''[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission.'' Section 133 of the NWPA states, in part, that ''[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor.''

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, ''General License for Storage of Spent Fuel at Power Reactor Sites'' (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled ''Approval of Spent Fuel Storage Casks'' containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on

December 22, 1994 (59 FR 65898), that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) cask designs and added them to the list of NRC-approved cask designs in 10 CFR 72.214 as CoC No. 1004. Amendments 3, 5, and 6, respectively, added the –61BT, –32PT, –24PHB designs to the Standardized NUHOMS® System.

Discussion

On April 18, 2006, and as supplemented on June 21, 2006, the certificate holder (Transnuclear, Inc.) submitted an application to the NRC to amend CoC No. 1004 to permit a Part 72 licensee to store Framatome-ANP, Version 9x9–2 fuel assemblies (FANP9 9x9–2) in the NUHOMS®–61BT dry shielded canister. No other changes to the Standardized NUHOMS® System design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there continues to be reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS® System cask design listing in 10 CFR 72.214 by adding Amendment No. 9 to CoC No. 1004. The amendment consists of changes to the TS that will allow for the addition of the FANP9 9x9–2 fuel assemblies as approved contents for storage in the NUHOMS®–61BT dry shielded canister. The particular TS which are changed are identified in the NRC staff's SER for Amendment No. 9.

The amended Standardized NUHOMS® System, when used under the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1004 is revised by adding the effective date of Amendment No. 9.

Procedural Background

This rule is limited to the changes contained in Amendment 9 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System design. The NRC is using the ''direct final rule procedure'' to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on April 17, 2007. However, if the NRC receives significant adverse comments by March 5, 2007, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this **Federal Register**. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the Standardized NUHOMS® System design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that contains generally applicable requirements.

Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883), directed that the Government's documents be in clear and accessible language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. This rule will amend the CoC for the Standardized NUHOMS® System within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the CoC by revising TS 1.2.1 and 1.2.14 to add the FANP9 9x9–2 fuel assemblies as approved contents for storage in the NUHOMS®–61BT dry shielded canister. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment

and finding of no significant impact are available from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in 10 CFR 72.214. On December 22, 1994 (59 FR 65898), the NRC issued an amendment to part 72 that approved the Standardized NUHOMS® System design by adding it to the list of NRC-approved cask designs in 10 CFR 72.214. On April 18, 2006, and as supplemented on June 21, 2006, the certificate holder, Transnuclear, Inc., submitted an application to the NRC to amend CoC No. 1004 to permit a part 72 licensee to use the FANP9 9x9–2 fuel assemblies in the NUHOMS®–61BT dry shielded canister.

The alternative to this action is to withhold approval of Amendment No. 9 and to require any part 72 licensee seeking to use Amendment No. 9 to request an exemption from the requirements of 10 CFR 72.212 and 72.214. Under this alternative, each interested part 72 licensee would have to prepare, and the NRC would have to review, a separate exemption request, thereby increasing the administrative burden upon the NRC and the costs to each licensee.

Approval of the direct final rule is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this regulatory analysis, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and TN. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required.

Congressional Review Act

Under the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: January 7, 2004.

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

Amendment Number 8 Effective Date: December 5, 2005.

Amendment Number 9 Effective Date: April 17, 2007.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: NUHOMS®–24P, –52B, –61BT, –32PT, –24PHB, and –24PTH.

* * * * *

Dated at Rockville, Maryland, this 19th day of January, 2007.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7–1644 Filed 1–31–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE255; Special Conditions No. 23–195–SC]

Special Conditions: Aviation Technology Group (ATG), Inc., Javelin Model 100 Series Airplane; Flight Performance, Flight Characteristics, and Operating Limitations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Aviation Technology Group (ATG), Inc., Javelin Model 100 Series airplane. This airplane will have a novel or unusual design feature(s) associated with engine location, certain performance, flight characteristics and operating limitations necessary for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is January 24, 2007. Comments must be received on or before March 5, 2007.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket CE255, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE255. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4125, fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE255.'' The postcard will be date stamped and returned to the commenter.

Background

On February 15, 2005, Aviation Technology Group (ATG); 8001 South InterPort Boulevard, Suite 310; Englewood, Colorado 80112–5951, applied for a type certificate for their new Model 100 Javelin airplane in accordance with the airworthiness standards in 14 CFR, part 23. The Javelin is a two-place, twin engine, turbofan-powered light jet airplane with a planned maximum operating altitude of 45,000 feet. Part 23 regulations in effect on the date of ATG's application do not contain adequate or appropriate safety standards for a small, high performance jet airplane such as the Javelin. In accordance with Small Airplane Directorate policy, the safety standards for flight performance, flight characteristics and operational limitations that the Federal Aviation Administration (FAA) finds necessary to establish an acceptable level of safety for this type of airplane are presented in this special condition.

Type Certification Basis

Under the provisions of 14 CFR, part 21, § 21.17, ATG must show that the Model 100 meets the applicable provisions of part 23, as amended by Amendment 23–1 through 23–55 thereto. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the ATG Model 100 series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

In addition to the applicable airworthiness regulations and special conditions, the Model 100 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR, part 34 and the part 23 noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Novel or Unusual Design Features

ATG intends to certificate the Javelin in both utility and acrobatic categories. The ATG Javelin Model 100 will incorporate the following novel or unusual design features:

- Two-place, tandem configuration.
- Maximum takeoff weight of approximately 6,900 pounds.
- Design cruise speed of 500 knots calibrated airspeed.

• Two Williams FJ33–4A–18M turbofan engines with dual channel FADEC controls.

• Major airframe components constructed of carbon fiber composite materials.

• Hydraulically boosted flight control system with floor-mounted control sticks.

• Integrated avionics including Avidyne displays, autopilot, and flight management. System.

Novel features on the ATG Model 100 include rear mounted turbine engines embedded in the fuselage, boosted controls, and high-speed, high-altitude acrobatic capability.

Applicability

As discussed above, these special conditions are applicable to the ATG Model 100 series. Should ATG apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on ATG Model 100 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 14 CFR 11.38 and 11.19.

The Special Conditions

Several 14 CFR part 23 paragraphs have been replaced by or supplemented with special conditions. These special conditions have been numbered to match the 14 CFR part 23 paragraphs they replace or supplement. Additionally, many of the other applicable part 23 paragraphs cross-reference paragraphs that are replaced by or supplemented with special conditions. It is implied that the special conditions associated with these paragraphs must be applied. This principal applies to all part 23 paragraphs that cross-reference paragraphs associated with special conditions.

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the ATG Model 100 series airplanes.

1. SC 23.45 General

Instead of compliance with § 23.45, the following apply:

(a) Unless otherwise prescribed, the performance requirements of this part must be met for—

(1) Still air and standard atmosphere; and

(2) Ambient atmospheric conditions, for commuter category airplanes, for reciprocating engine-powered airplanes of more than 6,000 pounds maximum weight, and for turbine engine-powered airplanes.

(b) Performance data must be determined over not less than the following ranges of conditions—

(1) Airport altitudes from sea level to 10,000 feet; and

(2) For reciprocating engine-powered airplanes of more than 6,000 pounds maximum weight and turbine engine-powered airplanes, temperature from standard to 30 °C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions of § 23.1041 to § 23.1047 is shown, if lower.

(c) Performance data must be determined with the cowl flaps or other means for controlling the engine cooling air supply in the position used in the cooling tests required by § 23.1041 to § 23.1047.

(d) The available propulsive thrust must correspond to engine power, not exceeding the approved power, less—

(1) Installation losses; and

(2) The power absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

(e) The performance, as affected by engine power or thrust, must be based on a relative humidity:

(1) Of 80 percent at and below standard temperature; and

(2) From 80 percent, at the standard temperature, varying linearly down to 34 percent at the standard temperature plus 50 °F.

(f) Unless otherwise prescribed, in determining the takeoff and landing distances, changes in the airplane's configuration, speed, and power must be made in accordance with procedures established by the applicant for operation in service. These procedures must be able to be executed consistently by pilots of average skill in atmospheric conditions reasonably expected to be encountered in service.

(g) The following, as applicable, must be determined on a smooth, dry, hard-surfaced runway—

(1) Not applicable;

(2) Accelerate-stop distance of SC 23.55;

(3) Takeoff distance and takeoff run of SC 23.59; and

(4) Landing distance of SC 23.75.

Note: The effect on these distances of operation on other types of surfaces (for example, grass, gravel) when dry, may be determined or derived and these surfaces listed in the Airplane Flight Manual in accordance with SC 23.1583(p).

(h) The following also apply:

(1) Unless otherwise prescribed, the applicant must select the takeoff, enroute, approach, and landing configurations for the airplane.

(2) The airplane configuration may vary with weight, altitude, and temperature, to the extent that they are compatible with the operating procedures required by paragraph (h)(3) of this section.

(3) Unless otherwise prescribed, in determining the critical-engine-inoperative takeoff performance, takeoff flight path, and accelerate-stop distance, changes in the airplane's configuration, speed, and power must be made in accordance with procedures established by the applicant for operation in service.

(4) Procedures for the execution of discontinued approaches and balked landings associated with the conditions prescribed in SC 23.67(c)(4) and SC 23.77(c) must be established.

(5) The procedures established under paragraphs (h)(3) and (h)(4) of this section must—

(i) Be able to be consistently executed by a crew of average skill in atmospheric conditions reasonably expected to be encountered in service;

(ii) Use methods or devices that are safe and reliable; and

(iii) Include allowance for any reasonably expected time delays in the execution of the procedures.

2. SC 23.51 Takeoff Speeds

Instead of compliance with § 23.51, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) The following apply:

(l) V_1 must be established in relation to V_{EF} as follows:

(i) V_{EF} is the calibrated airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant but must not be less than 1.05 V_{MC} determined under § 23.149(b) or, at the option of the applicant, not less than V_{MCG} determined under § 23.149(f).

(ii) The takeoff decision speed, V_1, is the calibrated airspeed on the ground at which, as a result of engine failure or other reasons, the pilot is assumed to have made a decision to continue or discontinue the takeoff. The takeoff decision speed, V_1, must be selected by the applicant but must not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine is failed and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop determination of SC 23.55.

(2) The rotation speed, V_R, in terms of calibrated airspeed, must be selected by the applicant and must not be less than the greatest of the following:

(i) V_1;

(ii) 1.05 V_{MC} determined under § 23.149(b);

(iii) 1.10 V_{S1}; or

(iv) The speed that allows attaining the initial climb-out speed, V_2, before reaching a height of 35 feet above the takeoff surface in accordance with SC 23.57(c)(2).

(3) For any given set of conditions, such as weight, altitude, temperature, and configuration, a single value of V_R must be used to show compliance with both the one-engine-inoperative takeoff and all-engines-operating takeoff requirements.

(4) The takeoff safety speed, V_2, in terms of calibrated airspeed, must be selected by the applicant so as to allow the gradient of climb required in SC 23.67(c)(1) and (c)(2) but must not be less than 1.10 V_{MC} or less than 1.20 V_{S1}.

(5) The one-engine-inoperative takeoff distance, using a normal rotation rate at a speed 5 knots less than V_R, established in accordance with paragraph (c)(2) of this section, must be shown not to exceed the corresponding one-engine-inoperative takeoff distance, determined in accordance with SC 23.57 and SC 23.59(a)(1), using the established V_R. The takeoff, otherwise performed in accordance with SC 23.57, must be continued safely from the point at which the airplane is 35 feet above the takeoff surface and at a speed not less than the established V_2 minus 5 knots.

(6) The applicant must show, with all engines operating, that marked increases in the scheduled takeoff distances, determined in accordance with SC 23.59(a)(2), do not result from over-rotation of the airplane or out-of-trim conditions.

3. SC 23.53 Takeoff Performance

Instead of compliance with § 23.53, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) Takeoff performance, as required by SC 23.55 through SC 23.59, must be determined with the operating engine(s) within approved operating limitations.

4. SC 23.55 Accelerate-stop Distance

Instead of compliance with § 23.55, the following apply:

The accelerate-stop distance must be determined as follows:

(a) The accelerate-stop distance is the sum of the distances necessary to—

(1) Accelerate the airplane from a standing start to V_{EF} with all engines operating;

(2) Accelerate the airplane from V_{EF} to V_1, assuming the critical engine fails at V_{EF}; and

(3) Come to a full stop from the point at which V_1 is reached.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distances if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

5. SC 23.57 Takeoff Path

Instead of compliance with § 23.57, the following apply:

The takeoff path is as follows:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface at or below which height the transition from the takeoff to the enroute configuration must be completed; and

(1) The takeoff path must be based on the procedures prescribed in SC 23.45;

(2) The airplane must be accelerated on the ground to V_{EF} at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(b) During the acceleration to speed V_2, the nose gear may be raised off the ground at a speed not less than V_R. However, landing gear retraction must not be initiated until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this section—

(1) The slope of the airborne part of the takeoff path must not be negative at any point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface, and must continue at a speed as close as practical to, but not less than V_2, until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb must not be less than 1.2 percent for two-engine airplanes; and

(4) Except for gear retraction and automatic propeller feathering, the airplane configuration must not be changed, and no change in power that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path to 35 feet above the takeoff surface must be determined by a continuous demonstrated takeoff.

(e) The takeoff path from 35 feet above the takeoff surface must be determined by synthesis from segments; and

(1) The segments must be clearly defined and must be related to distinct changes in configuration, power, and speed;

(2) The weight of the airplane, the configuration, and the power must be assumed constant throughout each segment and must correspond to the most critical condition prevailing in the segment; and

(3) The Takeoff flight path must be based on the airplane's performance without utilizing ground effect.

6. SC 23.59 Takeoff Distance and Takeoff Run

Instead of compliance with § 23.59, the following apply:

The takeoff distance and, at the option of the applicant, the takeoff run, must be determined.

(a) Takeoff distance is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface as determined under SC 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance from the start of the takeoff to the point at

which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with SC 23.57.

(b) If the takeoff distance includes a clearway, the takeoff run is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the liftoff point and the point at which the airplane is 35 feet above the takeoff surface as determined under SC 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance from the start of the takeoff to a point equidistant between the liftoff point and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with SC 23.57.

7. SC 23.61 Takeoff Flight Path

Instead of compliance with § 23.61, the following apply:

The takeoff flight path must be determined as follows:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with SC 23.59.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths, as determined in accordance with SC 23.57 and with paragraph (a) of this section, reduced at each point by a gradient of climb equal to 0.8 percent for two-engine airplanes.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

8. SC 23.63 Climb: General

Instead of compliance with § 23.63, the following apply:

(a) Compliance with the requirements of §§ 23.65, 23.66, SC 23.67, 23.69, and SC 23.77 must be shown—

(1) Out of ground effect; and

(2) At speeds that are not less than those at which compliance with the powerplant cooling requirements of §§ 23.1041 to 23.1047 has been demonstrated; and

(3) Unless otherwise specified, with one engine inoperative, at a bank angle not exceeding 5 degrees.

(b) Not applicable.

(c) Not applicable.

(d) Compliance must be shown at weights as a function of airport altitude and ambient temperature within the operational limits established for takeoff and landing, respectively, with—

(1) SC 23.67(c)(1), SC 23.67(c)(2), and SC 23.67(c)(3) for takeoff; and

(2) SC 23.67(c)(3), SC 23.67(c)(4), and SC 23.77(c) for landing.

9. SC 23.66 Takeoff Climb: One-engine Inoperative

Instead of compliance with § 23.66, see SC 23.67.

10. SC 23.67 Climb: One Engine Inoperative

Instead of compliance with § 23.67, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) The following apply:

(1) *Takeoff; landing gear extended.* The steady gradient of climb at the altitude of the takeoff surface must be measurably positive for two-engine airplanes with—

(i) The critical engine inoperative and its propeller in the position it rapidly and automatically assumes;

(ii) The remaining engine(s) at takeoff power;

(iii) The landing gear extended, and all landing gear doors open;

(iv) The wing flaps in the takeoff position(s);

(v) The wings level; and

(vi) A climb speed equal to V_2.

(2) *Takeoff; landing gear retracted.* The steady gradient of climb at an altitude of 400 feet above the takeoff surface must be not less than 2.0 percent of two-engine airplanes with—

(i) The critical engine inoperative and its propeller in the position it rapidly and automatically assumes;

(ii) The remaining engine(s) at takeoff power;

(iii) The landing gear retracted;

(iv) The wing flaps in the takeoff position(s);

(v) A climb speed equal to V_2.

(3) *Enroute.* The steady gradient of climb at an altitude of 1,500 feet above the takeoff or landing surface, as appropriate, must be not less than 1.2 percent for two-engine airplanes with—

(i) The critical engine inoperative and its propeller in the minimum drag position;

(ii) The remaining engine(s) at not more than maximum continuous power;

(iii) The landing gear retracted;

(iv) The wing flaps retracted; and

(v) A climb speed not less than 1.2 V_{S1}.

(4) *Discontinued approach.* The steady gradient of climb at an altitude of 400 feet above the landing surface must be not less than 2.1 percent for two-engine airplanes with—

(i) The critical engine inoperative and its propeller in the minimum drag position;

(ii) The remaining engine(s) at takeoff power;

(iii) Landing gear retracted;

(iv) Wing flaps in the approach position(s) in which V_{S1} for these position(s) does not exceed 110 percent of the V_{S1} for the related all-engines-operating landing position(s); and

(v) A climb speed established in connection with normal landing procedures but not exceeding 1.5 V_{S1}.

11. SC 23.73 Reference Landing Approach Speed

Instead of compliance with § 23.73, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) The reference landing approach speed, V_{REF}, must not be less than the greater of 1.05 V_{MC}, determined in § 23.149(c), and 1.3 V_{SO}.

12. SC 23.77 Balked Landing

Instead of compliance with § 23.77, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) Each airplane must be able to maintain a steady gradient of climb of at least 3.2 percent with—

(1) Not more than the power that is available on each engine eight seconds after initiation of movement of the power controls from the minimum flight idle position;

(2) Landing gear extended;

(3) Wing flaps in the landing position; and

(4) A climb speed equal to V_{REF}, as defined in SC 23.73(c).

13. SC 23.177 Static Directional and Lateral Stability

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability, as shown by the tendency to recover from a wings-level sideslip with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach, and landing configurations. This must be shown with symmetrical power up to maximum continuous power, and at speeds from 1.2 V_{S1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate). The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip, up to that at which full rudder is used or a control force limit in § 23.143 is reached, whichever occurs first, and at speeds from 1.2 V_{S1} to V_O, the rudder pedal force must not reverse.

(b) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for all landing gear and flap positions. This must be shown with symmetrical power up to 75 percent of maximum

continuous power at speeds above 1.2 V_{S1} in the takeoff configuration(s) and at speeds above 1.3 V_{S1} in other configurations, up to V_{FE}, V_{LE}, or V_{FC} / M_{FC} (as appropriate) for the configuration being investigated, in the takeoff, climb, cruise, and approach configurations. For the landing configuration, the power must be that necessary to maintain a 3 degree angle of descent in coordinated flight. The static lateral stability must not be negative at 1.2 V_{S1} in the takeoff configuration, or at 1.3 V_{S1} in other configurations. The angle of sideslip for these tests must be appropriate to the type of airplane, but in no case may the constant heading sideslip angle be less than that obtainable with a 10 degree bank or, if less, the maximum bank angle obtainable with full rudder deflection or 150 pound rudder force.

(c) Paragraph (b) of this section does not apply to acrobatic category airplanes certificated for inverted flight.

(d) In straight, steady slips at 1.2 V_{S1} for any landing gear and flap positions, and for any symmetrical power conditions up to 50 percent of maximum continuous power, the aileron and rudder control movements and forces must increase steadily, but not necessarily in constant proportion, as the angle of sideslip is increased up to the maximum appropriate to the type of airplane. At larger slip angles, up to the angle at which the full rudder or aileron control is used or a control force limit contained in § 23.143 is reached, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Rapid entry into, and recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

14. SC 23.201(e) Wings Level Stall

Instead of compliance with § 23.201(e), the following apply:

(e) Compliance with the requirements of this section must be shown under the following conditions:

(1) The flaps, landing gear, and speedbrakes in any likely combination of positions and altitudes appropriate for the various positions.

(2) Thrust—

(i) Idle; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(3) Trim at 1.4 V_{S1} or the minimum trim speed, whichever is higher.

15. SC 23.203(c) Turning Flight and Accelerated Turning Stalls

Instead of compliance with § 23.203(c), the following apply:

(c) Compliance with the requirements of this section must be shown under the following conditions:

(1) The flaps, landing gear, and speedbrakes in any likely combination of positions and altitudes appropriate for the various positions.

(2) Thrust—

(i) Idle; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(3) Trim at 1.4 V_{S1} or the minimum trim speed, whichever is higher.

16. SC 23.251 Vibration and Buffeting

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be demonstrated in flight to be free from any vibration and buffeting that would prevent continued safe flight in any likely operating condition.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration under any appropriate speed and thrust conditions up to V_{DF} / M_{DF}. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition SC 23.1505.

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO} / M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

17. SC 23.253 High Speed Characteristics

Instead of compliance with § 23.253, the following apply:

(a) *Speed increase and recovery characteristics.* The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO} / M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal attitude and its speed reduced to V_{MO} / M_{MO}, without:

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D / M_D, V_{DF} / M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF} / M_{DF}. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

(b) *Maximum speed for stability characteristics*, V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum speed at which the requirements of § 23.175(b)(1), special condition SC 23.177, and 23.181 must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF} except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

18. SC 23.255 Out of Trim Characteristics

In the absence of specific requirements for out-of-trim characteristics, apply the following:

(a) From an initial condition with the airplane trimmed at cruise speeds up to V_{MO}/M_{MO}, the airplane must have satisfactory maneuvering stability and controllability with the degree of out-of-trim in both the airplane nose-up and nose-down directions, which results from the greater of the following:

(1) A three-second movement of the longitudinal trim system at its normal

rate for the particular flight condition with no aerodynamic load (or an equivalent degree of trim for airplanes that do not have a power-operated trim system), except as limited by stops in the trim system, including those required by § 23.655(b) for adjustable stabilizers; or

(2) The maximum mis-trim that can be sustained by the autopilot while maintaining level flight in the high speed cruising condition.

(b) In the out-of-trim condition specified in paragraph (a) of this special condition, when the normal acceleration is varied from +1 g to the positive and negative values specified in paragraph (c) of this special condition, the following apply:

(1) The stick force versus g curve must have a positive slope at any speed up to and including V_{FC}/M_{FC}; and

(2) At speeds between V_{FC}/M_{FC} and V_{DF}/M_{DF}, the direction of the primary longitudinal control force may not reverse.

(c) Except as provided in paragraph (d) and (e) of this special condition, compliance with the provisions of paragraph (a) of this special condition must be demonstrated in flight over the acceleration range as follows:

(1) -1 g to +2.5 g; or

(2) 0 g to 2.0 g, and extrapolating by an acceptable method to -1 g and +2.5 g.

(d) If the procedure set forth in paragraph (c)(2) of this special condition is used to demonstrate compliance and marginal conditions exist during flight test with regard to reversal of primary longitudinal control force, flight tests must be accomplished from the normal acceleration at which a marginal condition is found to exist to the applicable limit specified in paragraph (b)(1) of this special condition.

(e) During flight tests required by paragraph (a) of this special condition, the limit maneuvering load factors, prescribed in §§ 23.333(b) and 23.337, need not be exceeded. Also, the maneuvering load factors associated with probable inadvertent excursions beyond the boundaries of the buffet onset envelopes determined under SC 23.251(e), need not be exceeded. In addition, the entry speeds for flight test demonstrations at normal acceleration values less than 1 g must be limited to the extent necessary to accomplish a recovery without exceeding V_{DF}/M_{DF}.

(f) In the out-of-trim condition specified in paragraph (a) of this special condition, it must be possible from an overspeed condition at V_{DF}/M_{DF} to produce at least 1.5 g for recovery by applying not more than 125 pounds of longitudinal control force using either the primary longitudinal control alone or the primary longitudinal control and the longitudinal trim system. If the longitudinal trim is used to assist in producing the required load factor, it must be shown at V_{DF}/M_{DF} that the longitudinal trim can be actuated in the airplane nose-up direction with the primary surface loaded to correspond to the least of the following airplane nose-up control forces:

(1) The maximum control forces expected in service, as specified in §§ 23.301 and 23.397.

(2) The control force required to produce 1.5 g.

(3) The control force corresponding to buffeting or other phenomena of such intensity that is a strong deterrent to further application of primary longitudinal control force.

19. SC 23.703 Takeoff Warning System

Unless it can be shown that a lift or longitudinal trim device that affects the takeoff performance of the aircraft would not give an unsafe takeoff configuration when selected out of an approved takeoff position, a takeoff warning system must be installed and meet the following requirements:

(a) The system must provide to the pilots an aural warning that is automatically activated during the initial portion of the takeoff roll if the airplane is in a configuration that would not allow a safe takeoff. The warning must continue until—

(1) The configuration is changed to allow safe takeoff, or

(2) Action is taken by the pilot to abandon the takeoff roll.

(b) The means used to activate the system must function properly for all authorized takeoff power settings and procedures and throughout the ranges of takeoff weights, altitudes, and temperatures for which certification is requested.

20. SC 23.735 Brakes

In addition to paragraphs (a), (b), (c), and (d), the following apply:

(e) The rejected takeoff brake kinetic energy capacity rating of each main wheel brake assembly must not be less than the kinetic energy absorption requirements determined under either of the following methods—

(1) The brake kinetic energy absorption requirements must be based on a conservative rational analysis of the sequence of events expected during a rejected takeoff at the design takeoff weight.

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel brake assembly may be derived from the following formula—

$$KE = 0.0443\frac{WV^2}{N} \text{ where,}$$

KE = Kinetic energy per wheel (ft.-lbs.);
W = Design takeoff weight (lbs.);
V = Ground speed, in knots, associated with the maximum value of V_1 selected in accordance with SC 23.51(c)(1);
N = Number of main wheels with brakes.

21. SC 23.1323 Airspeed Indicating System

In addition to paragraphs (a), (b), (c), and (d), the following apply:

(e) In addition, the airspeed indicating system must be calibrated to determine the system error during the accelerate-takeoff ground run. The ground run calibration must be obtained between 0.8 of the minimum value of V_1, and 1.2 times the maximum value of V_1 considering the approved ranges of altitude and weight. The ground run calibration must be determined assuming an engine failure at the minimum value of V_1.

(f) Where duplicate airspeed indicators are required, their respective pitot tubes must be far enough apart to avoid damage to both tubes in a collision with a bird.

22. SC 23.1505 Airspeed Limitations

Instead of compliance with § 23.1505(a), the following apply:

(a) The maximum operating limit speed (V_{MO}/M_{MO} -airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C/M_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 23.335(b) or found necessary in the flight test conducted under SC 23.253.

23. SC 23.1583 Operating Limitations

Instead of compliance with § 23.1583, the following apply:

The Airplane Flight Manual must contain operating limitations determined under this part 23, including the following—

(a) *Airspeed limitations.* The following information must be furnished:

(1) Information necessary for the marking of the airspeed limits on the indicator as required in § 23.1545, and the significance of each of those limits and of the color coding used on the indicator.

(2) The speeds V_{MC}, V_O, V_{LE}, and V_{LO}, if established, and their significance.

(3) In addition, for turbine powered airplanes—

(i) The maximum operating limit speed, V_{MO} / M_{MO} and a statement that this speed must not be deliberately exceeded in any regime of flight (climb, cruise or descent) unless a higher speed is authorized for flight test or pilot training;

(ii) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures; and

(iii) The airspeed limits must be shown in terms of V_{MO} / M_{MO} instead of V_{NO} and V_{NE}.

(b) *Powerplant limitations.* The following information must be furnished:

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments required by § 23.1549 through § 23.1553.

(c) *Weight.* The airplane flight manual must include—

(1) The maximum weight; and

(2) The maximum landing weight, if the design landing weight selected by the applicant is less than the maximum weight.

(3) Not applicable.

(4) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant at which—

(i) The airplane complies with the climb requirements of SC 23.63(d)(1); and

(ii) The accelerate-stop distance determined under SC 23.55 is equal to the available runway length plus the length of any stopway, if utilized; and either:

(iii) The takeoff distance determined under SC 23.59(a) is equal to the available runway length; or

(iv) At the option of the applicant, the takeoff distance determined under SC 23.59(a) is equal to the available runway length plus the length of any clearway and the takeoff run determined under SC 23.59(b) is equal to the available runway length.

(5) The maximum landing weight for each airport altitude within the range selected by the applicant at which—

(i) The airplane complies with the climb requirements of SC 23.63(d)(2) for ambient temperatures within the range selected by the applicant; and

(ii) The landing distance determined under SC 23.75 for standard temperatures is equal to the available runway length.

(6) The maximum zero wing fuel weight, where relevant, as established in accordance with § 23.343.

(d) *Center of gravity.* The established center of gravity limits.

(e) *Maneuvers.* The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section.

(1) Not applicable.

(2) Not applicable.

(3) *Acrobatic category airplanes.* A list of approved flight maneuvers demonstrated in type flight tests, together with recommended entry speeds and any other associated limitations.

(4) Not applicable.

(5) Not applicable.

(f) *Maneuver load factor.* The positive limit load factors in g's, and, in addition, the negative limit load factor for acrobatic category airplanes.

(g) *Minimum flight crew.* The number and functions of the minimum flight crew determined under § 23.1523.

(h) *Kinds of operation.* A list of the kinds of operation to which the airplane is limited or from which it is prohibited under § 23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been given.

(i) *Maximum operating altitude.* The maximum altitude established under § 23.1527.

(j) *Maximum passenger seating configuration.* The maximum passenger seating configuration.

(k) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(l) *Baggage and cargo loading.* The following information for each baggage and cargo compartment or zone—

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(m) *Systems.* Any limitations on the use of airplane systems and equipment.

(n) *Ambient temperatures.* Where appropriate, maximum and minimum ambient air temperatures for operation.

(o) *Smoking.* Any restrictions on smoking in the airplane.

(p) *Types of surface.* A statement of the types of surface on which operations may be conducted. (See SC 23.45(g) and SC 23.1587(a)(4) and (d)(4).)

24. SC 23.1585 Operating Procedures

Instead of compliance with § 23.1585, the following apply:

(a) For all airplanes, information concerning normal, abnormal (if applicable), and emergency procedures and other pertinent information necessary for safe operation and the achievement of the scheduled performance must be furnished, including—

(1) An explanation of significant or unusual flight or ground handling characteristics;

(2) The maximum demonstrated values of crosswind for takeoff and landing, and procedures and information pertinent to operations in crosswinds;

(3) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling);

(4) Procedures for restarting any turbine engine in flight, including the effects of altitude; and

(5) Procedures, speeds, and configuration(s) for making a normal approach and landing, in accordance with SC 23.73 and SC 23.75, and a transition to the balked landing condition.

(6) Not applicable.

(b) Not applicable.

(c) In addition to paragraph (a) of this section, for all multiengine airplanes, the following information must be furnished:

(1) Procedures, speeds, and configuration(s) for making an approach and landing with one engine inoperative;

(2) Procedures, speeds, and configuration(s) for making a balked landing with one engine inoperative and the conditions under which a balked landing can be performed safely, or a warning against attempting a balked landing;

(3) The V_{SSE} determined in § 23.149; and

(4) Procedures for restarting any engine in flight including the effects of altitude.

(d) Not applicable.

(e) Not applicable.

(f) In addition to paragraphs (a) and (c) of this section, the information must include the following:

(1) Procedures, speeds, and configuration(s) for making a normal takeoff.

(2) Procedures and speeds for carrying out an accelerate-stop in accordance with § 23.55.

(3) Procedures and speeds for continuing a takeoff following engine

failure in accordance with § 23.59(a)(1) and for following the flight path determined under § 23.57 and § 23.61(a).

(g) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(h) For each airplane showing compliance with § 23.1353(g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(i) Information on the total quantity of usable fuel for each fuel tank, and the effect on the usable fuel quantity, as a result of a failure of any pump, must be furnished.

(j) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

25. SC 23.1587 Performance Information

Instead of compliance with § 23.1587, the following apply:

Unless otherwise prescribed, performance information must be provided over the altitude and temperature ranges required by SC 23.45(b).

(a) For all airplanes, the following information must be furnished—

(1) The stalling speeds V_{SO} and V_{S1} with the landing gear and wing flaps retracted, determined at maximum weight under § 23.49, and the effect on these stalling speeds of angles of bank up to 60 degrees;

(2) The steady rate and gradient of climb with all engines operating, determined under § 23.69(a);

(3) The landing distance, determined under SC 23.75 for each airport altitude and standard temperature, and the type of surface for which it is valid;

(4) The effect on landing distances of operation on other than smooth hard surfaces, when dry, determined under SC 23.45(g); and

(5) The effect on landing distances of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(b) Not applicable.

(c) Not applicable.

(d) In addition to paragraph (a) of this section the following information must be furnished—

(1) The accelerate-stop distance determined under SC 23.55;

(2) The takeoff distance determined under SC 23.59(a);

(3) At the option of the applicant, the takeoff run determined under SC 23.59(b);

(4) The effect on accelerate-stop distance, takeoff distance and, if determined, takeoff run, of operation on other than smooth hard surfaces, when dry, determined under SC 23.45(g);

(5) The effect on accelerate-stop distance, takeoff distance, and if determined, takeoff run, of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component;

(6) The net takeoff flight path determined under SC 23.61(b);

(7) The enroute gradient of climb/descent with one engine inoperative, determined under § 23.69(b);

(8) The effect, on the net takeoff flight path and on the enroute gradient of climb/descent with one engine inoperative, of 50 percent of the headwind component and 150 percent of the tailwind component;

(9) Overweight landing performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights) as follows—

(i) The maximum weight for each airport altitude and ambient temperature at which the airplane complies with the climb requirements of SC 23.63(d)(2); and

(ii) The landing distance determined under SC 23.75 for each airport altitude and standard temperature.

(10) The relationship between IAS and CAS determined in accordance with § 23.1323(b) and (c).

(11) The altimeter system calibration required by § 23.1325(e).

Issued in Kansas City, Missouri on January 24, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1609 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26323; Directorate Identifier 2006–NM–150–AD; Amendment 39–14918; AD 2007–03–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all Boeing Model 737 airplanes. The existing AD currently requires installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system. For certain airplanes, this new AD adds, among other actions, repetitive tests of the force fight monitor of the main rudder power control unit (PCU), repetitive tests of the standby hydraulic actuation system, and corrective action; as applicable. For those airplanes, this new AD also adds, among other actions, replacement of both input control rods of the main rudder PCU and the input control rod of the standby rudder PCU with new input control rods, as applicable, which ends the repetitive tests. For certain other airplanes, this new AD adds installation of an enhanced rudder control system in accordance with new service information. This AD results from a report of a fractured rod end of an input control rod of the main rudder PCU and a subsequent report of a fractured rod end of the input control rod of the standby rudder PCU. We are issuing this AD to prevent failure of one of the two input control rods of the main rudder PCU, which, under certain conditions, could result in reduced controllability of the airplane; and to prevent failure of any combination of two input control rods of the main rudder PCU and/or standby rudder PCU, which could cause an uncommanded rudder hardover event and result in loss of control of the airplane.

DATES: This AD becomes effective February 16, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 16, 2007.

We must receive any comments on this AD by April 2, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.

• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

You may examine the contents of the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC. This docket number is FAA–2006–26323; the directorate identifier for this docket is 2006–NM–150–AD.

FOR FURTHER INFORMATION CONTACT:

Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6468; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2002–20–07 R1, amendment 39–12940 (67 FR 67518, November 6, 2002). The existing AD applies to all Boeing Model 737 airplanes. That NPRM was published in the **Federal Register** on November 15, 2006 (71 FR 66474). That NPRM proposed to continue to require installation of a new rudder control system and changes to the adjacent systems to accommodate that new rudder control system. For certain airplanes, that NPRM proposed to add, among other actions, repetitive tests of the force fight monitor of the main rudder power control unit (PCU), repetitive tests of the standby hydraulic actuation system, and corrective action; as applicable. For those airplanes, that NPRM also proposed to add, among other actions, replacement of both input control rods of the main rudder PCU and the input control rod of the standby rudder PCU with new input control rods, as applicable, which would end the repetitive tests. For certain other airplanes, that NPRM proposed to add installation of an enhanced rudder control system in accordance with new service information.

Actions Since NPRM Was Issued

Since we issued the NPRM, we have received a report of a fractured rod end on the input control rod of the standby rudder PCU on a Model 737–700 series airplane. This condition was discovered during accomplishment of an operational test of the standby hydraulic actuation system in accordance with Boeing Alert Service Bulletin 737–27A1280, dated May 25, 2006 (one of the actions specified in the NPRM). Investigation revealed that, although the input control rod had an existing crack of significant size, it ultimately fractured due to fatigue damage. Fatigue damage is caused by repetitive forces being applied (i.e., cyclic loading).

This finding of fatigue damage is not consistent with the results of our investigation that led to actions specified in the NPRM. The actions and compliance times specified in the NPRM were based on our finding that, while the input control rod may have been cracked during assembly, no significant loading was present to further degrade the integrity of the input control rod over time, causing it to fracture.

Therefore, we have determined that, for certain Model 737–600, –700, –700C, –800, and –900 series airplanes on which the suspect input control rod of the standby rudder PCU was installed during production, the compliance times for the following actions in the NPRM will not detect and correct failure of the input control rod of the standby rudder PCU in a timely manner:

• The initial compliance time and repetitive intervals for the operational tests specified in paragraph (g)(1), and

• The threshold for the replacement of the input control rod of the standby rudder PCU specified in paragraph (g)(3).

Failure of one of the two input control rods of main rudder PCU, under certain conditions, could result in reduced controllability of the airplane; and failure of any combination of two input control rods of the main rudder PCU and/or standby rudder PCU could cause an uncommanded rudder hardover event and result in loss of control of the airplane.

Relevant Service Information

As discussed in the ''Relevant Service Information'' section of the NPRM, we have reviewed the following service information:

RELEVANT SERVICE INFORMATION

Service Bulletin	Revision level	Date
Boeing Alert Service Bulletin 737–27A1239	Original	January 11, 2001.
Boeing Alert Service Bulletin 737–27A1279	Original	June 20, 2006.
Boeing Alert Service Bulletin 737–27A1280	Original	May 25, 2006.
Boeing Alert Service Bulletin 737–27A1281	Original	June 14, 2006.
Boeing Service Bulletin 737–22–1042	1	April 5, 1985.
Boeing Service Bulletin 737–27A1206	3	December 14, 2000.
Boeing Service Bulletin 737–27–1246, including Appendix A	1	February 21, 2002.
Boeing Service Bulletin 737–27–1247	1	July 25, 2002.
Boeing Service Bulletin 737–27–1252	3	May 12, 2006.
Boeing Service Bulletin 737–27–1253	3	May 12, 2006.
Boeing Service Bulletin 737–27–1255	3	May 10, 2006.
Boeing Service Bulletin 737–27–1262	Original	December 19, 2002.
Boeing Service Bulletin 737–27–1263	1	September 25, 2003.
Boeing Service Bulletin 737–27–1264	1	April 3, 2003.
Boeing Service Bulletin 737–55–1052	1	August 5, 2004.
Boeing 737 Service Bulletin 27–1026	Original	January 15, 1971.
Smiths Aerospace Actuation Systems Service Bulletin 1150–27–05A	Original	August 28, 2003.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Comments

We provided the public the opportunity to submit comments

regarding the NPRM and have considered the comments that have been received.

Support for the NPRM

The Air Line Pilots Association and Boeing support the NPRM.

Requests To Issue Stand Alone AD

Delta and Southwest Airlines request that we issue a stand alone AD that addresses the control rod issues only instead of superseding AD 2002–20–07 R1. Delta states that a stand alone AD will minimize the amount of revisions to engineering authorizations (EAs). Delta points out that a supersedure AD would result in their revising four EAs whereas a stand alone AD would result in revising only one EA. Southwest Airlines states that a stand alone AD would be more cost effective because a supersedure AD results in document revision, record keeping, and computer tracking issues.

We do not agree. As explained in the ''Actions Since Existing AD Was Issued'' section of the NPRM, we have received a report of a fractured rod end on one of the two input control rods of the main rudder PCU on a Model 737–800 series airplane. The incident airplane had been modified to comply with the requirements of AD 2002–20–07 R1. We determined that accomplishment of the actions required by AD 2002–20–07 R1 introduces a new unsafe condition (i.e., failure of the input control rods of the rudder control system, which, under certain conditions, could result in reduced controllability of the airplane and/or loss of control of the airplane), and that a substantive change to that AD was necessary.

Our current policy specifies that, whenever a substantive change is made to an existing AD that imposes a new burden, we must supersede the AD. Substantive changes are those made to any instruction or reference that affects the substance of the AD. Substantive changes include part numbers, service bulletin and manual references, compliance times, applicability, methods of compliance, corrective action, inspection requirements, and effective dates. We consider the changes to the existing AD to be substantive. This superseding AD is assigned a new amendment number and new AD number, and the previous amendment is removed from the system. This procedure facilitates the efforts of principal maintenance inspectors in tracking ADs and ensuring that affected operators have incorporated the most recent changes into their maintenance programs.

With regard to paperwork changes required by affected operators, § 121.380(a)(2)(vi) (''Maintenance recording requirements'') of the Federal Aviation Regulations (14 CFR 121.380(a)(2)(vi)), requires that persons holding an operating certificate and operating under part 121 of the Federal Aviation Regulations must keep ''The current status of applicable airworthiness directives, including the date and methods of compliance * * *.'' Whether an existing AD is superseded or a new stand alone AD is issued, the new AD is assigned a new AD number. In either case, the new AD is identified by its ''new'' AD number. In light of this, affected operators updating their maintenance records to indicate the current AD status would have to record a new AD number in both cases. Further, operators are always given credit for work previously performed according to the existing AD by means of the phrase in the compliance section of the AD that states, ''* * * unless the actions have already been done.'' Therefore, we have determined that a supersedure AD is appropriate.

Request To Supersede Other ADs

If the AD does supersede AD 2002–20–07 R1, Southwest Airlines requests that the AD also supersede the following ADs:

- AD 95–06–53, amendment 39–9199 (60 FR 18981, April 14, 1995);
- AD 97–05–10, amendment 39–9954 (62 FR 9679, March 4, 1997); and
- AD 98–02–01, amendment 39–10283 (63 FR 1903, January 13, 1998).

Southwest Airlines states that these additional ADs were all listed in AD 2002–20–07 R1. Southwest Airlines states that if these changes are not made, operators will be required to report the status of obsolete ADs.

We do not agree. AD 2002–20–07 R1 revises AD 2002–20–07, amendment 39–12903 (67 FR 62341, October 7, 2002), and supersedes ADs 95–06–53, 97–05–10, and 98–02–01. As of November 12, 2002 (the effective date of AD 2002–20–07 R1), those ADs were effectively superseded (cancelled) and thus no further action is required in regard to those ADs.

Request To Change List of Affected ADs

Southwest Airlines also requests that AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997), be added to the list of ADs in Table 1 of the NPRM.

We agree. Our intent was to retain all requirements of AD 2002–20–07 R1. AD 97–14–04 was included in paragraph (b) of AD 2002–20–07 R1. However, we inadvertently omitted it from Table 1 in paragraph (b) of the NPRM. Doing the action required by paragraph (f) or (h) of this AD ends the requirements of AD 97–14–04 and the other ADs identified in Table 1 of this AD. We have revised Table 1 accordingly.

Request To Revise the Applicability

Southwest Airlines requests that the applicability of the NPRM be revised to affect Model 737–600, –700, –700C, –800 and –900 series airplanes (i.e., 737 next generation airplanes), line numbers 1 through 1947 only (no change requested for affected Model 737–100 through –500 series airplanes). Southwest Airlines states that the effectivity of Boeing Alert Service Bulletin 737–27A1279, dated June 20, 2006; and Boeing Alert Service Bulletin 737–27A1280, dated May 25, 2006; indicate that 737 next generation airplanes with line numbers 1948 or higher have an enhanced rudder control system with the improved rods already installed. Southwest Airlines also states that it is a hardship to require AD reporting on airplanes that have been modified in production.

We do not agree with Southwest Airlines to exclude airplanes on which an enhanced rudder control system with new input control rods has been installed in production from the applicability of this AD. Paragraph (j) of this AD states, ''As of the effective date of this AD, no person may install an input control rod, P/N 251A3495–1, on any airplane.'' All Model 737 airplanes, including those in production now and in the future, are subject to this requirement. Therefore, we have determined that the applicability of the AD is correct as proposed.

Request To Exclude Certain Airplanes From Paragraph (g) of the NPRM

Southwest Airlines requests that paragraph (g) be revised to exclude airplanes for which maintenance records can conclusively show that the suspect rods have not been installed. Southwest Airlines states that some airplanes have had control rods replaced or modified with the latest kits.

We partially agree. We agree with Southwest Airlines that no further work is required by paragraph (g) for airplanes on which the input control rods have been replaced in accordance with paragraph (g)(4) of this AD. We also find that no further work is required by paragraph (h) for airplanes on which the input control rods have been installed in accordance with paragraph (h) of this AD. We have determined that those actions adequately address the identified unsafe condition of this AD related to the input

control rods. However, we do not agree to revise this AD. Operators are given credit for work previously done by the means of the phrase in the ''Compliance'' section of the AD that states, ''* * * unless the actions have already been done.'' Therefore, in the case of this AD, if the actions required by paragraph (g)(4) or (h) of this AD (i.e., replacement of input control rods or installation of a new rudder control system) have been done in accordance with the service information identified in Table 4 or 5 of this AD, respectively, before the effective date of this AD, this AD does not require those actions to be repeated.

Request To Delete Reference to Certain Group Configurations

AirTran Airways supports the proposed actions described in the NPRM, but points out a discrepancy between the NPRM and a referenced service bulletin. AirTran Airways notes that paragraph (g)(1)(iii) of the NPRM is applicable to airplanes identified as Group 1, Configuration 1, and Group 2, Configurations 1 and 2, in Boeing Alert Service Bulletin 737–27A1280, dated May 25, 2006. AirTran Airways states that the service bulletin does not contain any configurations for Group 2.

From this comment, we infer that AirTran Airways is requesting that we delete the reference to Configurations 1 and 2 for Group 2 specified in paragraphs (g)(1)(iv), (g)(2)(i), and (g)(2)(ii) of this AD (paragraph (g)(1)(iii) in the NPRM). We agree and have revised this AD accordingly.

Request To Delete Concurrent Requirements

Southwest Airlines states that it is impossible to install the enhanced rudder system without doing the concurrent requirements in paragraph (i) of the NPRM. Southwest Airlines notes that each of the service bulletins identified in Table 5 of the NPRM, except ''[Boeing] [S]ervice [B]ulletin 737–55–1042,'' is listed in the initial release of the primary service bulletins identified in Table 4 of the NPRM. Southwest Airlines believes it is impossible to trim the spar as illustrated in the primary service bulletins unless the trim was previously accomplished per ''[Boeing] [S]ervice [B]ulletin 737–55–1042.'' Southwest Airlines also believes that the NPRM validates this by not requiring rework other than for the discrepant control rods.

From this comment, we infer that Southwest Airlines is requesting that the concurrent requirements specified in paragraph (i) of the NPRM be deleted. Since Boeing Service Bulletin 737–55–1042 describes procedures unrelated to the subject of this AD, we also infer that Southwest Airlines meant to refer to Boeing Service Bulletin 737–55–1052, Revision 1, dated August 5, 2004 (referred to in paragraph (i)(2)(iv) of this AD as a concurrent requirement). We do not agree with Southwest Airlines to delete the concurrent requirements of this AD. Our current policy specifies that service information must be ''published'' (i.e., incorporation by reference (IBR)) if the AD mandates a method of compliance that is contained only in the referenced service information. As in the case of this AD, the concurrent requirement actions specified in Table 6 of the AD are contained only in the service information identified in that table, not in the primary service information identified in Table 5 of this AD. Therefore, we have made no change to this AD in this regard.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to supersede AD 2002–20–07 R1. This AD supersedes AD 2002–20–07 R1 and retains the requirements of the existing AD. This AD also requires accomplishing the actions specified in the applicable service information identified previously, except as discussed under ''Differences Between the AD and Certain Service Information.'' For certain airplanes, this AD also requires suspending a certain Master Minimum Equipment List item, until all improperly heat-treated input control rods are replaced.

Differences Between the AD and Certain Service Information

For certain Model 737–600, –700, –700C, –800, and –900 series airplanes on which the suspect input control rod of the standby rudder PCU was installed during production, the compliance times for the following actions required by this AD are different (i.e., shorter intervals) than those specified in Boeing Alert Service Bulletin 737–27A1279, dated June 20, 2006; and Boeing Alert Service Bulletin 737–27A1280, dated May 25, 2006:

- For the operational tests of the standby hydraulic actuation system: This AD specifies an initial compliance time of within 110 flight hours or 7 days after the effective date of this AD, whichever occurs later, and repetitive intervals of 110 flight hours or 7 days, whichever occurs later, whereas Boeing Alert Service Bulletin 737–27A1280 specifies an initial compliance time of within 60 days and repetitive intervals of 500 flight hours.
- For the replacement of the input control rod of the standby rudder PCU: This AD specifies a compliance time of within 90 days after the effective date of this AD whereas Boeing Alert Service Bulletin 737–27A1279 specifies a compliance time of 24 months.

As discussed previously in the ''Discussion'' section of this AD, the proposed compliance times for these actions may not detect and correct failure of the input control rod of the standby rudder PCU in a timely manner. While we do not yet have data on the growth rate of these cracks, we believe the revised compliance times described previously are adequate to ensure safety without imposing undue burdens on air commerce. In developing appropriate compliance times for these actions in this AD, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the operational tests and replacements. In consideration of these items, as well as the reported failures of the input control rods in service, we have determined that the compliance times in this AD will ensure an acceptable level of safety and allow the actions to be done during scheduled maintenance intervals for most affected operators.

Changes to NPRM

As a result of the differences between the AD and certain service information described previously, we have revised the applicable compliance times in this AD and changed certain paragraph identifiers and tables and added others.

In certain places in the NPRM, we referred to the incorrect year of the issuance date of Boeing Alert Service Bulletin 737–27A1280. The correct issuance date is May 25, 2006, not May 25, 2005. We have corrected this error in this AD.

FAA's Determination of the Effective Date

Regarding the reduced compliance times described previously, an unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

Regarding the reduced compliance times described previously, this AD is a final rule that involves requirements that affect flight safety and was not

preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2006–26323; Directorate Identifier 2006–NM–150–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–12940 (67 FR 67518, November 6, 2002) and adding the following new airworthiness directive (AD):

2007–03–07 Boeing: Amendment 39–14918. Docket No. FAA–2006–26323; Directorate Identifier 2006–NM–150–AD.

Effective Date

(a) This AD becomes effective February 16, 2007.

Affected ADs

(b) This AD affects the ADs specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(1) This AD supersedes AD 2002–20–07 R1.

(2) For airplanes on which the actions required by paragraph (f) of this AD have been done before the effective date of this AD: Doing the actions in paragraph (f) of this AD ends the requirements of the ADs listed in Table 1 of this AD.

(3) For airplanes on which the actions required by paragraph (f) of this AD have not been done before the effective date of this AD: Doing the actions in paragraph (h) of this AD ends the requirements of the ADs listed in Table 1 of this AD.

TABLE 1.—OTHER ADS

AD—	Amendment—
97–09–15 R1	39–10912
97–14–04	39–10061
99–11–05	39–11175
2000–22–02 R1	39–11948

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of a fractured rod end of an input control rod of the main rudder power control unit (PCU) and a subsequent report of a fractured rod end of the input control rod of the standby rudder PCU. We are issuing this AD to prevent failure of one of the two input control rods of the main rudder PCU, which, under certain conditions, could result in reduced controllability of the airplane; and to prevent failure of any combination of two input control rods of the main rudder PCU and/or standby rudder PCU, which could cause an uncommanded rudder hardover event and result in loss of control of the airplane.

Compliance

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

Requirements of AD 2002–20–07 R1

Installation

(f) Except as provided by paragraphs (h) and (i) of this AD: Within 6 years after November 12, 2002 (the effective date of AD 2002–20–07), do the actions required by paragraphs (f)(1) and (f)(2) of this AD, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(1) Install a new rudder control system that includes new components such as an aft torque tube, hydraulic actuators, and associated input control rods, and additional wiring throughout the airplane to support failure annunciation of the rudder control system in the flight deck. The system also must incorporate two separate inputs, each with an override mechanism, to two separate servo valves on the main rudder PCU; and an input to the standby PCU that also will include an override mechanism.

(2) Make applicable changes to the adjacent systems to accommodate the new rudder control system.

New Requirements of This AD

For Certain Airplanes: Tests, Suspension of Certain Master Minimum Equipment List Item, Replacements, Inspection, and Corrective Actions

(g) For airplanes on which the actions required by paragraph (f) of this AD have been done before the effective date of this AD: Do the actions in paragraphs (g)(1) through (g)(4) of this AD, as applicable.

(1) At the applicable times listed in paragraph 1.E., ''Compliance,'' of the applicable service bulletin specified in Table 2 of this AD; except, where the service bulletin specifies a compliance time from the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD: Do the tests specified in Table 2 of this AD, until all applicable actions required by paragraph (g)(4) of this AD have been done in accordance with the applicable service bulletin specified in Table 4 of this AD. Do all applicable corrective actions specified in Table 2 of this AD before further flight.

TABLE 2.—REPETITIVE TESTS FOR CERTAIN AIRPLANES

For model—	Do—	In accordance with the accomplishment instructions of—
(i) 737–100, –200, and –200C series airplanes identified as Group 1, Configuration 1, in the service bulletin.	The ''Rudder Main Power Control Unit Force Fight Test,'' the ''Standby Rudder Actuator Shutoff Valve Test,'' and any applicable corrective action.	Boeing Alert Service Bulletin 737–27A1281, dated June 14, 2006.
(ii) 737–300, –400, and –500 series airplanes identified as Group 2, Configuration 1, in the service bulletin.	The ''Rudder Main Power Control Unit Force Fight Test,'' the ''Standby Rudder Actuator Shutoff Valve Test,'' and any applicable corrective action.	Boeing Alert Service Bulletin 737–27A1281, dated June 14, 2006.
(iii) 737–600, –700, –700C, –800, and –900 series airplanes identified as Group 1, Configuration 1, in the service bulletin.	The ''Rudder Main Power Control Unit Force Fight Monitor Test,'' the ''Operational Test of the Standby Hydraulic Actuation System,'' and any applicable corrective action.	Boeing Alert Service Bulletin 737–27A1280, dated May 25, 2006.
(iv) 737–600, –700, –700C, –800, and –900 series airplanes identified as Group 2 in the service bulletin.	The ''Rudder Main Power Control Unit Force Fight Monitor Test,'' and any applicable corrective action.	Boeing Alert Service Bulletin 737–27A1280, dated May 25, 2006.

(2) At the applicable times listed in Table 3 of this AD, do the ''Operational Test of the Standby Hydraulic Actuation System,'' and any applicable corrective action, until all applicable actions required by paragraph (g)(4) of this AD have been done in accordance with the applicable service bulletin specified in Table 4 of this AD. The actions must be done in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1280, dated May 25, 2006. Do all applicable corrective actions before further flight.

TABLE 3.—REPETITIVE OPERATIONAL TESTS FOR CERTAIN AIRPLANES

For model—	On which the input control rod of the standby rudder PCU—	Do the ''Operational Test of the Standby Hydraulic Actuation System''—	And repeat the test at intervals not to exceed—
(i) 737–600, –700, –700C, –800, and –900 series airplanes identified as Group 2 in the service bulletin.	Has not been replaced as required by paragraph (g)(4)(v) of this AD.	Within 110 flight hours or 7 days after the effective date of this AD, whichever occurs later.	110 flight hours or 7 days, whichever occurs later.
(ii) 737–600, –700, –700C, –800, and –900 series airplanes identified as Group 2 in the service bulletin.	Has been replaced as required by paragraph (g)(4)(v) of this AD.	Within 60 days after the effective date of this AD.	500 flight hours.

(3) As of the effective date of this AD, do not use the Master Minimum Equipment List Item 27–21, ''STBY RUD ON light,'' until all applicable actions required by paragraph (g)(4) of this AD are done.

(4) At the applicable time specified in Table 4 of this AD, do the replacement(s) and inspection, as applicable, specified in that table. Do all applicable corrective actions specified in Table 4 of this AD before further flight. Doing all applicable actions ends the requirements of paragraphs (g)(1) through (g)(3) of this AD.

TABLE 4.—REPLACEMENT OF INPUT CONTROL RODS, INSPECTION, AND CORRECTIVE ACTION, AS APPLICABLE

For model—	Do the following action(s)—	In accordance with—	And do the replacement(s) and inspection, as applicable—
(i) 737–100, –200, and –200C series airplanes identified as Groups 1 through 9, Configuration 3, in the service bulletin.	Replace both input control rods of the main rudder PCU with new input control rods.	Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 737–27–1252, Revision 3, dated May 12, 2006.	Within 24 months after the effective date of this AD.

TABLE 4.—REPLACEMENT OF INPUT CONTROL RODS, INSPECTION, AND CORRECTIVE ACTION, AS APPLICABLE—Continued

For model—	Do the following action(s)—	In accordance with—	And do the replacement(s) and inspection, as applicable—
(ii) 737–300, –400, and –500 series airplanes identified as Groups 1 through 19, Configuration 3, in the service bulletin.	Replace both input control rods of the main rudder PCU with new input control rods.	Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 737–27–1255, Revision 3, dated May 10, 2006.	Within 24 months after the effective date of this AD.
(iii) 737–600, –700, –700C, –800, and –900 series airplanes identified as Groups 1 through 20, Configuration 3, in the service bulletin.	Replace both input control rods of the main rudder PCU with new input control rods, inspect the input control rod of the standby rudder PCU to determine if part number (P/N) 251A3495–1 is installed, and do any corrective action.	Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 737–27–1253, Revision 3, dated May 12, 2006.	Within 24 months after the effective date of this AD.
(iv) 737–600, –700, –700C, –800, and –900 series airplanes identified as Group 1 in the service bulletin.	Replace both input control rods of the main rudder PCU with new input control rods.	The Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1279, dated June 20, 2006.	Within 24 months after the effective date of this AD.
(v) 737–600, –700, –700C, –800, and –900 series airplanes identified as Group 1 in the service bulletin.	Replace the input control rod of the standby rudder PCU with a new input control rod.	The Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1279, dated June 20, 2006.	Within 90 days after the effective date of this AD.

For Certain Other Airplanes: Install New Rudder Control System Per Service Information

(h) For airplanes on which the actions required by paragraph (f) of this AD have not been done before the effective date of this AD: As of the effective date of this AD, use the applicable service bulletin specified in Table 5 of this AD to do the actions required by paragraph (f) of this AD at the time specified in that paragraph.

TABLE 5.—SERVICE BULLETINS FOR INSTALLATION OF NEW RUDDER CONTROL SYSTEM

For model—	Identified as—	Do the actions required by paragraph (f) of this AD in accordance with—
(1) 737–100, –200, and –200C series airplanes	Groups 1 through 9, Configurations 1 and 2, in the service bulletin.	Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 737–27–1252, Revision 3, dated May 12, 2006.
(2) 737–300, –400, and –500 series airplanes ..	Groups 1 through 19, Configurations 1 and 2, in the service bulletin.	Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 737–27–1255, Revision 3, dated May 10, 2006.
(3) 737–600, –700, –700C, –800, and –900 series airplanes.	Groups 1 through 20, Configurations 1 and 2, in the service bulletin.	Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 737–27–1253, Revision 3, dated May 12, 2006.

(i) Before or concurrently with the requirements of paragraph (h) of this AD, do the actions specified in Table 6 of this AD.

TABLE 6.—BEFORE/CONCURRENT REQUIREMENTS

Before or concurrently with the actions specified in—	Do these actions—	In accordance with the accomplishment instructions of—
(1) Paragraph (h)(1) of this AD	(i) Remove the rudder position sensor of the automatic flight control system.	Boeing Service Bulletin 737–22–1042, Revision 1, dated April 5, 1985.
	(ii) Replace the rudder feel and centering assembly with a new all-mechanical unit.	Boeing 737 Service Bulletin 27–1026, dated January 15, 1971.
	(iii) Install the rudder pressure reducer and yaw damper coupler.	Boeing Service Bulletin 737–27A1206, Revision 3, dated December 14, 2000.
	(iv) Install provisional wires for rudder system enhancement.	Boeing Service Bulletin 737–27–1246, Revision 1, including Appendix A, dated February 21, 2002.
	(v) Replace the P5–3 panel with a new panel	Boeing Service Bulletin 737–27–1263, Revision 1, dated September 25, 2003.
	(vi) Replace the input lever for the auxiliary rudder power control package with a new input lever.	Smiths Aerospace Actuation Systems Service Bulletin 1150–27–05A, dated August 28, 2003.

TABLE 6.—BEFORE/CONCURRENT REQUIREMENTS—Continued

Before or concurrently with the actions specified in—	Do these actions—	In accordance with the accomplishment instructions of—
(2) Paragraph (h)(2) of this AD	(i) Install provisional wires for rudder system enhancement.	Boeing Service Bulletin 737–27–1246, Revision 1, including Appendix A, dated February 21, 2002.
	(ii) Replace the P5–3 panel with a new panel	Boeing Service Bulletin 737–27–1264, Revision 1, dated April 3, 2003.
	(iii) Install a new yaw damper coupler	Boeing Service Bulletin 737–27A1206, Revision 3, dated December 14, 2000.
	(iv) Inspect the trailing edge beam on the vertical fin and rework if necessary.	Boeing Service Bulletin 737–55–1052, Revision 1, dated August 5, 2004.
	(v) Replace the input lever for the auxiliary rudder power control package with a new input lever.	Smiths Aerospace Actuation Systems Service Bulletin 1150–27–05A, dated August 28, 2003.
(3) Paragraph (h)(3) of this AD	(i) Install provisional wires for rudder system enhancement.	Boeing Service Bulletin 737–27–1247, Revision 1, dated July 25, 2002.
	(ii) Replace the P5–3 panel with a new panel	Boeing Service Bulletin 737–27–1262, dated December 19, 2002.
	(iii) Relocate the wire bundle routing in the vertical stabilizer.	Boeing Alert Service Bulletin 737–27A1239, dated January 11, 2001.

Parts Installation

(j) As of the effective date of this AD, no person may install an input control rod, P/N 251A3495–1, on any airplane.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) Except as provided by paragraph (j) of this AD: AMOCs approved previously in accordance with AD 2002–20–07 R1 are approved as AMOCs for the corresponding provisions of paragraphs (f) and (h) of this AD.

Material Incorporated by Reference

(l) You must use the applicable service bulletin specified in Table 7 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise. Boeing Service Bulletin 737–22–1042, Revision 1, dated April 5, 1985, contains the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1–7, 9	1	April 5, 1985.
8	Original	July 1, 1983.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at 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/cfr/ibr-locations.html.*

TABLE 7.—MATERIAL INCORPORATED BY REFERENCE

Boeing Service Bulletin	Revision level	Date
Boeing Alert Service Bulletin 737–27A1239	Original	January 11, 2001.
Boeing Alert Service Bulletin 737–27A1279	Original	June 20, 2006.
Boeing Alert Service Bulletin 737–27A1280	Original	May 25, 2006.
Boeing Alert Service Bulletin 737–27A1281	Original	June 14, 2006.
Boeing Alert Service Bulletin 737–22–1042	1	April 5, 1985.
Boeing Alert Service Bulletin 737–27A1206	3	December 14, 2000.
Boeing Alert Service Bulletin 737–27–1246, including Appendix A	1	February 21, 2002.
Boeing Alert Service Bulletin 737–27–1247	1	July 25, 2002.
Boeing Alert Service Bulletin 737–27–1252	3	May 12, 2006.
Boeing Alert Service Bulletin 737–27–1253	3	May 12, 2006.
Boeing Alert Service Bulletin 737–27–1255	3	May 10, 2006.
Boeing Alert Service Bulletin 737–27–1262	Original	December 19, 2002.
Boeing Alert Service Bulletin 737–27–1263	1	September 25, 2003.
Boeing Alert Service Bulletin 737–27–1264	1	April 3, 2003.
Boeing Alert Service Bulletin 737–55–1052	1	August 5, 2004.
Boeing 737 Alert Service Bulletin 27–1026	Original	January 15, 1971.
Smiths Aerospace Actuation Systems Service Bulletin 1150–27–05A	Original	August 28, 2003.

Issued in Renton, Washington, on January 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1496 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26371 Directorate Identifier 2006–CE–70–AD; Amendment 39–14917; AD 2007–03–06]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Limited PC–12 and PC–12/45 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as executive seats equipped with pedestal legs that were produced using a material that deviates from the approved design data. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 8, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 8, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 11, 2006 (71 FR 71497). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that executive seats equipped with pedestal legs were produced using a material that deviates from the approved design data. As a consequence the pedestal legs may not perform as intended under emergency landing conditions. In order to correct and control the situation, this AD requires a one time inspection to identify the Vendor Part Number (VPN) of the pedestal legs and the Serial Number (S/N) of the executive seat and the replacement of the pedestal legs if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD would affect about 394 products of U.S. registry. We also estimate that it would take about 0.5 work-hours per product to comply with the inspection requirement of this AD. In addition, we estimate this AD would affect about 59 seats and take about 1 work-hour per seat to comply with the parts replacement requirement of this AD. The average labor rate is $80 per work-hour. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on U.S. operators to be $15,760, or $40 per product for inspection and $4,720, or $80 per seat for parts replacement.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

(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) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–03–06 Pilatus Aircraft Limited: Amendment 39–14917; Docket No. FAA–2006–26371; Directorate Identifier 2006–CE–70–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 8, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PC–12 and PC–12/45 airplanes, serial numbers 101 through 683, that are:

(1) Certificated in any category; and

(2) Equipped with executive passenger seats Model Number 4006 manufactured by DeCrane Aircraft Seating Company, Inc. Vendor Part Number (VPN) 403150–1 or 403150–2 with Serial Numbers (S/N) identified in DeCrane Aircraft Mandatory Service Bulletin SB05147 Revision B, dated June 26, 2006.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that executive seats equipped with pedestal legs were produced using a material that deviates from the approved design data. As a consequence the pedestal legs may not perform as intended under emergency landing conditions. In order to correct and control the situation, this AD requires a one time inspection to identify the VPN of the pedestal legs and the S/N of the executive seat and the replacement of the pedestal legs if necessary.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within 30 days after the effective date of this AD:

(i) Perform an inspection to identify the VPN of the pedestal legs and the S/N of the executive seat following the accomplishment instructions in Pilatus PC–12 Service Bulletin No.: 25–032, dated October 2, 2006.

(ii) If during the inspection required by paragraph (e)(1)(i) of this AD any pedestal legs with a VPN and executive seats with a S/N which correspond with the data in DeCrane Aircraft Mandatory Service Bulletin SB05147 Revision B, dated June 26, 2006, are found, prior to further flight, replace the affected pedestal legs following the accomplishment instructions in Pilatus PC–12 Service Bulletin No.: 25–032, dated October 2, 2006, with new pedestal legs with VPN 431005–17 and 431005–18. The removed parts must be returned to Pilatus.

(2) As of the effective date of this AD, no person shall install any executive seats model number 4006 produced by DeCrane Aircraft Seating Company, Inc., VPN 403150–1 or 403150–2 with S/Ns identified in DeCrane Aircraft Mandatory Service Bulletin SB05147 Revision B, dated June 26, 2006, on any Pilatus Models PC–12 and PC–12/45 airplane, unless the mandatory actions of this AD have been implemented.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to Federal Office of Civil Aviation (FOCA) AD HB–2006–444, dated November 7, 2006; Pilatus Aircraft Limited Service Bulletin No.: 25–032, dated October 2, 2006; and DeCrane Aircraft Mandatory Service Bulletin SB05147 Revision B, dated June 26, 2006, for related information.

Material Incorporated by Reference

(h) You must use Pilatus PC–12 Service Bulletin No.: 25–032, dated October 2, 2006; and DeCrane Aircraft Mandatory Service Bulletin SB05147 Revision B, dated June 26, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Support Manager, CH–6371 STANS, Switzerland; telephone: + 41 41 619 6208; fax: + 41 41 619 7311; e-mail: *SupportPC12@pilatus-aircaft.com;* or Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, CO 80021; telephone: (303) 465–9099, fax: (303) 465–6040; e-mail: *Productsupport@PilBal.com.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at 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/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on January 24, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1398 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25929 Directorate Identifier 2006–CE–54–AD; Amendment 39–14919; AD 2007–03–08]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd., PC–6 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as the discovery of exfoliation corrosion in the fittings of some PC–6 airplanes. These fittings are installed exterior to the bottom skin of the wing skin. If not corrected, undetected corrosion in this area could lead to failure of the fitting and subsequent loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 8, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 8, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust Street, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4059; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. The streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 3, 2006 (71 FR 64653). That NPRM proposed to require repetitive inspections of the wing strut fitting and the replacement of corroded wing strut fittings with new retrofit wing strut fittings.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Comment Issue: Summary

Clay Lacy asks if there is a planned hourly minimum or just calendar time for the compliance. He notes that he has a PC–6 that was built by Fairchild in 1967, has only 1,600 hours total time, and has always been hangared. Mr. Lacy added, ''We have never detected any corrosion at any location.''

We are relying on the Federal Office for Civil Aviation (FOCA), which is the state of design authority, and the manufacturer's (Pilatus) determination that calendar time compliance for this type of corrosion inspection is appropriate. The FOCA AD requires a one-time inspection, and the corresponding service bulletin (SB) states the required repetitive inspection will be included in Chapter 5 of the Aircraft Maintenance Manual (AMM). Both initial and repetitive compliance times are specified in calendar time. We do not have information for this issue to correlate between Time-In-Service (TIS) and calendar time.

Comment Issue: What Prompted AD

Clay Lacy states if possible he would like more information that prompted this proposed AD.

Further information on what prompted this proposed AD may be found in the Docket Management System (DMS). This action was initiated as a result of FOCA AD HB–2006–400. We have checked the DMS and this document is electronically available.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD, and take precedence over the actions copied from the MCAI.

Costs of Compliance

We estimate that this AD will affect about 49 products of U.S. registry. We also estimate that it will take 27 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $2,500 per wing per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $350,840 or $7,160 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

(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) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2007–03–08 Pilatus Aircraft Ltd., PC–6 Series Airplanes: Amendment 39–14919; Docket No. FAA–2006–25929; Directorate Identifier 2006–CE–54–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 8, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes; manufacturer serial numbers (MSN) 101 through 949, MSN 951, and MSN 2001 through 2092; that are certificated in any category. These airplanes are also identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that exfoliation corrosion in the fittings of some PC–6 airplanes was found. These fittings are installed exterior to the bottom skin of the wing skin. If not corrected, undetected corrosion in this area could lead to failure of the fitting and subsequent loss of control of the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within 12 months after the effective date of this AD and repetitively thereafter at intervals not to exceed 12 months, perform an inspection required by paragraph 3.B.(2) of PILATUS PC–6 Service Bulletin (SB) No. 57–003, dated June 13, 2006, of the fittings Part Number (P/N) 6102.0041.00, P/N 111.35.06.055 or P/N 111.35.06.056 for signs of corrosion. Repair of minor surface corrosion is permitted according to the Repair and Overhaul Manual (ROM) (Report No. 1391), Chap. 2 and 4. Corrosion outside these limits is not permitted.

(2) If during any of the inspections required by paragraph (e)(1) of this AD, any minor surface corrosion is found, prior to further flight, remove the minor surface corrosion (Ref. ROM. Chap. 2 and 4).

(3) If during any of the inspections required by paragraph (e)(1) of this AD, any corrosion out of limits is found (Ref. ROM, Chap. 2 and 4), prior to further flight, replace the fittings in accordance with paragraph 4 of PILATUS PC–6 SB No. 57–003, dated June 13, 2006, with new (retrofit) fittings P/N 111.35.06.185 and/or P/N 111.35.06.186.

(4) Replacement of the fittings with new (improved) fittings P/N 111.35.06.185 (left hand side) and/or 111.35.06.186 (right hand side) terminates the repetitive inspection for that side.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) The FAA AD is requiring repetitive inspections, not just a one-time inspection as required in the MCAI.

(2) The Service Bulletin specifies ''subsequent inspections for corrosion will be included in Chapter 5 of the Aircraft Maintenance Manual (AMM).'' The only way we (FAA) can mandate these repetitive inspections is through an AD.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et.seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to FOCA AD HB–2006–400, effective date September 28, 2006, which references Pilatus Aircraft Ltd. SB No. 57–003, dated June 13, 2006, for related information.

Material Incorporated by Reference

(h) You must use PILATUS PC–6 Service Bulletin (SB) No. 57–003, dated June 13, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; fax: +41 41 619 6224.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at 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/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on January 24, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1494 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 2007N–0024]

Medical Devices; Hematology and Pathology Devices; Classification of Cord Blood Processing System and Storage Container

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying a cord blood processing system and storage container into class II (special controls). The special control that will apply to this device is the guidance document entitled ''Class II Special Controls Guidance Document: Cord Blood Processing System and Storage Container.'' FDA is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of this device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for this device.

DATES: This rule is effective March 5, 2007. The classification of this device into class II became effective on January 3, 2007.

FOR FURTHER INFORMATION CONTACT: Denise Sánchez, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. FDA determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued an order on October 6, 2006, classifying into class III the Biosafe SA Sepax Cell Separation System and single use kits because this device is not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or to a device which was subsequently reclassified into class I or class II. On November 1, 2006, Biosafe SA submitted to FDA a petition requesting classification of the Sepax Cell Separation System and single use kits under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the Biosafe SA Sepax Cell Separation System and single use kits, when used in the processing and the storage of cord blood, can be classified into class II with the establishment of special controls. FDA believes that special controls, in addition to general controls, are adequate to provide reasonable assurance of the safety and effectiveness of this device and that there is sufficient information to establish special controls to provide such assurance.

This device is assigned the generic name ''cord blood processing system and storage container.'' It is identified as a device intended for use in the processing and the storage of cord blood. This device is a functionally closed processing system that includes containers, other soft goods, and a centrifugation system for cord blood concentration, and a final container for the cryopreservation and the storage of a cord blood product.

FDA has identified the risks to health associated with the use of a cord blood processing system and storage container. These risks include lack of biocompatible components; toxicity of residual chemical sterilants used to sterilize device components; toxicity of leached materials from or that permeate through plastic device components; insufficient mechanical strength of device containers, tubing, and seals resulting in integrity failure of the device; contamination; instability of soft goods over time; physical damage to or loss of the cord blood product; software failure; operator/user injury; electromagnetic interference; and electrical hazards.

FDA believes that the class II special controls guidance document will aid in mitigating the potential risks to health by providing recommendations for describing the device, validating performance characteristics, and labeling. The guidance document provides recommendations for fulfilling the premarket (510(k)) submission requirements for this device. FDA believes that the special controls guidance document, in addition to general controls, addresses the risks to health identified in the previous paragraph and provides reasonable assurance of the safety and effectiveness of a cord blood processing system and storage container. Therefore, on January 3, 2007, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this device classification at 21 CFR 864.9900.

Following the effective date of this final classification rule, manufacturers submitting a 510(k) premarket notification for a cord blood processing system and storage container will need to address the issues covered in the

special controls guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of this type of device and, therefore, this type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, before marketing the device, which contains information about the cord blood processing system and storage container they intend to market.

II. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 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 agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device into class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and will not constitute a potential barrier to small competitors that may wish to enter the market in the future, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $122 million, using the most current (2005) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, FDA has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 is not required. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document: Cord Blood Processing System and Storage Container.'' FDA concludes that the special controls guidance document contains information collection provisions that are subject to review by the OMB under the PRA and that have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E; OMB Control No. 0910–0120).

VI. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Biosafe SA for the classification of the Sepax Cell Separation System and single use kits into class II (special controls), dated November 1, 2006.

List of Subjects in 21 CFR Part 864

Blood, Medical devices, Packaging and containers.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add subpart K, consisting of § 864.9900, to read as follows:

Subpart K—Products Used In Establishments That Manufacture Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)

§ 864.9900 Cord blood processing system and storage container.

(a) *Identification.* A cord blood processing system and storage container is a device intended for use in the processing and the storage of cord blood. This device is a functionally closed processing system that includes containers, other soft goods, and a centrifugation system for cord blood concentration, and a final container for the cryopreservation and the storage of a cord blood product.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Cord Blood Processing System and Storage Container.'' For the availability of this guidance document, see § 864.1(d).

Dated: January 24, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–1566 Filed 1–31–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Honolulu 07–001]

RIN 1625–AA87

Security Zone; Waters Surrounding M/V TONG CHENG, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 500-yard moving security zone around the M/V TONG CHENG during its transit within the Honolulu Captain of the Port Zone. This security zone is necessary to protect the M/V TONG CHENG from hazards associated with vessels and persons approaching too close during transit. Entry of persons or vessels into this temporary security zone is prohibited unless authorized by the Captain of the Port (COTP).

DATES: This rule is effective from 12:01 a.m. (HST) on January 22, 2007, until 11:59 p.m. (HST) on February 18, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Honolulu 07–001 and are available for inspection or copying at Coast Guard Sector Honolulu, 400 Sand Island Parkway, Honolulu, HI, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Quincey Adams, U.S. Coast Guard Sector Honolulu at (808) 842–2600.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This security zone is established as part of the ongoing response operations relating to the M/V TONG CHENG. The Unified Command ordered this emergency procedure as soon as it was deemed necessary but not in time to complete full notice-and-comment rulemaking procedures, and the need for this temporary security zone was not determined until less than 30 days before the M/V TONG CHENG will require the protection provided by this rule. Publishing an NPRM and delaying the effective date would be contrary to the public interest since the transit would occur before completion of the notice-and-comment rulemaking process, thereby jeopardizing the security of the people and property associated with the operation. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The COTP finds this good cause to be the immediate need for a security zone to allay the waterborne security threats surrounding the M/V TONG CHENG's transit.

Background and Purpose

On December 26, 2006, M/V TONG CHENG suffered damage to the number 2 cargo hold at sea during heavy weather. Damage consisted of a 2.5 foot fracture in the port shell. The Cargo hold had taken on 21 feet of water. The Vessel was enroute to Cuba via the Panama Canal. The Vessel altered course towards Honolulu seeking entry to effect repairs.

Sector Honolulu formed a Unified Command with Customs and Border Protection, State of Hawaii and Responsible Party. Assets arranged under the Unified Command arrived on scene to conduct vessel damage assessment, source control, environmental assessment/mitigation and pollution investigation. Sector Honolulu coordinated with Marine Safety Center on vessel stability issues. The Unified Command plans to effect temporary repair of the hull damage in order to improve vessel stability for a safe transit to Honolulu Harbor for permanent repairs.

Due to the unknown duration of repairs, M/V TONG CHENG's actual arrival date and time will not be known in advance. The Coast Guard is establishing this security zone to ensure that the vessel is protected during its transit into Honolulu Harbor with as much public notice as possible.

Discussion of Rule

This temporary security zone is effective from 12:01 a.m. (HST) on January 22, 2007, until 11:59 p.m. (HST) on February 18, 2007. It is located within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10) and covers all U.S. navigable waters extending 500 yards in all directions from M/V TONG CHENG, from the surface of the water to the ocean floor. The security zone moves with M/V TONG CHENG while in transit. The security zone becomes fixed when M/V TONG CHENG is anchored, position-keeping, or moored. The security zone is anticipated to be activated and enforced for just a few days during its four-week effective period, however operations are constrained by safety and security of the vessel and crew as well as the potential for damage to the environment from an oil spill. A broadcast notice to mariners will be issued to notify the public of this activation and enforcement period as soon as possible. M/V TONG CHENG will have a Coast Guard escort from entry into the Captain of the Port Honolulu Zone till it arrives at Honolulu Harbor or alternate anchorage designated by the Captain of the Port Honolulu.

The general regulations governing security zones contained in 33 CFR 165.33 apply. Entering into, transiting through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof. The Captain of the Port will cause notice of the enforcement of the security zone described in this section to be made by broadcast notice to mariners. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce the zone. The Captain of the Port may waive any of the requirements of this rule for any person, vessel, or class of vessel upon finding that application of the security zone is unnecessary or impractical for the purpose of maritime security. Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone, the limited geographic area affected by it, and its ability to move with the protected vessel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small

businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect that there will be little or no impact to small entities due to the narrowly tailored scope of this security zone.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. An ''Environmental Analysis Check List'' and ''Categorical Exclusion Determination (CED)'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a new § 165.T14–152 to read as follows:

§ 165.T14–152 Security zone; waters surrounding M/V TONG CHENG, HI.

(a) *Location*. The following area, in U.S. navigable waters within the Honolulu Captain of the Port Zone (See 33 CFR 3.70–10), from the surface of the water to the ocean floor, is a security zone: All waters extending 500 yards in all directions from M/V TONG CHENG. The security zone moves with M/V TONG CHENG while it is in transit and becomes fixed when M/V TONG CHENG is anchored, position-keeping, or moored.

(b) *Effective period*. This section is effective from 12:01 a.m. (HST) on January 22, 2007, until 11:59 p.m. (HST) on February 18, 2007.

(c) *Regulations*. The general regulations governing security zones contained in 33 CFR 165.33 apply. Entering into, transiting through, or anchoring within this zone is prohibited unless authorized by the Captain of the Port or a designated representative thereof.

(d) *Enforcement*. The Coast Guard will begin enforcement of the security zone described in this section upon M/V TONG CHENG's arrival into the Captain of the Port Honolulu Zone.

(e) *Informational notice*. The Captain of the Port of Honolulu will cause notice of the enforcement of the security zone described in this section to be made by broadcast notice to mariners.

(f) *Authority to enforce*. Any Coast Guard commissioned, warrant, or petty officer, and any other Captain of the Port representative permitted by law, may enforce this temporary security zone.

(g) *Waiver*. The Captain of the Port may waive any of the requirements of this section for any person, vessel, or class of vessel upon finding that application of the security zone is unnecessary or impractical for the purpose of maritime security.

(h) *Penalties*. Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: January 21, 2007.

V.B. Atkins,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu.

[FR Doc. E7–1611 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[EPA–R08–OAR–2005–UT–0007; FRL–8275–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Administrative Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation of authority.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Governor of Utah on August 15, 2001. This SIP submittal deletes Utah's rules R307–102–3, ''Administrative Procedures and Hearings,'' and R307–414–3, ''Request for Review.'' EPA is removing Utah's rules R307–102–3 and R307–414–3 from Utah's federally approved SIP, because these rules are not required to be in Utah's SIP. This action is being taken under section 110 of the Clean Air Act.

EPA is also providing notice that on November 8, 2006, Utah was delegated authority to implement and enforce certain New Source Performance Standards, as of July 1, 2005. In addition, we are approving updates to the NSPS ''Delegation Status of New Source Performance Standards'' table.

DATES: This rule is effective on April 2, 2007, without further notice, unless EPA receives adverse comment by March 5, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R08–OAR–2005–UT–0007, by one of the following methods:

- *www.regulations.gov* Follow the on-line instructions for submitting comments.
- *E-mail: ostrand.laurie@epa.gov* and *fiedler.kerri@epa.gov*.
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA–R08–OAR–2005–UT–0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, CO 80202–1129, phone (303) 312–6493, and e-mail at: *fiedler.kerri@epa.gov.*

SUPPLEMENTARY INFORMATION:

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II. What Is the State's Process To Submit These Materials to EPA?
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IV. Section 110(l) of the Clean Air Act
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VI. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The word *State* means the State of Utah, unless the context indicates otherwise.

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.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:

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

(b) 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.

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

(d) Describe any assumptions and provide any technical information and/or data that you used.

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

(f) Provide specific examples to illustrate your concerns, and suggest alternatives.

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

(h) Make sure to submit your comments by the comment period deadline identified.

II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Utah Air Quality Board (AQB) held a public hearing on September 28, 2000, to address revisions to Utah's Administrative Procedures: adding R307–103, amending R307–120–8 and R307–415–6d, and deleting R307–102–3, R307–415–10 and R307–414–3. The AQB adopted the revisions on December 6, 2000, and they became State effective on December 7, 2000. Utah's Rule R307–103–2 was further revised at a public hearing held by the AQB on February 21, 2001, and was adopted by the AQB on April 4, 2001. Utah's Rule R307–103–2 became State effective on April 12, 2001. These SIP revisions were submitted by the Governor of Utah to us on August 15, 2001.

Based on a letter from Richard W. Sprott, Director, Utah Division of Air Quality (UDAQ), to Richard Long, Director, Air and Radiation Program, dated May 18, 2005, Utah's Rules R307–120–8, R307–415–6d, and R307–415–10 were submitted for our reference only and should not be incorporated into the federally approved SIP. Furthermore, Utah's Rule R307–103 has been withdrawn based on a letter from the Governor of Utah, dated November 3, 2006. Therefore, we are only proposing to approve the removal of Utah's rules R307–102–3 and R307–414–3 from Utah's federally approved SIP. We have evaluated the Governor's submittal and have concluded that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

The Utah Air Quality Board (AQB) held a public hearing on May 18, 2006, to address revisions to Utah's Standards of Performance for New Stationary Sources (NSPS), R307–210. The revisions were adopted by the AQB and they became State effective on June 15, 2006. These revisions were submitted by the Governor of Utah to us on August 25, 2006.

III. EPA's Evaluation of the Submittal

A. Utah's Rule R307–102–3, ''Administrative Procedures and Hearings''

We are approving the removal of Utah's Rule R307–102–3, ''Administrative Procedures and Hearings,'' from Utah's federally approved SIP. Rule R307–102–3 designates whether certain proceedings and actions are to be conducted formally or informally. We approved this rule into the SIP on July 6, 1999 (64 FR 36248). These provisions are not required by the CAA and are, therefore, not required to be in Utah's SIP. However, the state has now deleted rule R307–102–3 and we are approving its removal from the SIP.

B. Utah's Rule R307–414–3, ''Request for Review''

We are approving the removal of Utah's Rule R307–414–3, ''Administrative Procedures and Hearings,'' from Utah's federally approved SIP. Rule R307–414–3 contains provisions on how to appeal the fee for UDAQ review of applications for new construction or modification requests. We approved this rule into the SIP on July 8, 1994 (59 FR 35036). The CAA does not require that such provisions be in Utah's SIP. The state has now deleted rule R307–414–3 and we are approving the removal from the SIP.

C. Delegation of Authority

The August 25, 2006 submittal revises Utah's Rule R307–210, ''Stationary Sources'' by updating the incorporation by reference for new source performance standards (NSPS) to reflect updated versions of the federal regulations. R307–210 is the rule the State uses to implement our NSPS.

On November 8, 2006, we issued a letter delegating responsibility for all sources located, or to be located, in the State of Utah subject to the NSPS in 40 CFR part 60:

Ref: 8P–AR

Dianne R. Nielson, Executive Director, Department of Environmental Quality, 150 North 1950 West, Salt Lake City, UT 84114–4820

Dear Ms. Nielson: On August 25, 2006, the State submitted a revision to the Utah Air Quality Rules to the United States Environmental Protection Agency (EPA). Specifically, the State revised section R307–210–1. Standards of Performance for New Stationary Sources (NSPS), to incorporate the July 1, 2005 Code of Federal Regulations, and to make minor changes to the general provisions. This revision, in effect, updates the citation of the incorporated Federal NSPS to July 1, 2005.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those NSPS, so long as the States' regulations are equivalent to the Federal regulations. EPA reviewed the pertinent statutes and regulations of the State of Utah and determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of Utah. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of Utah as follows:

(A) Responsibility for all sources located, or to be located, in the State of Utah subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60. The categories of new stationary sources covered by this delegation are all NSPS subparts in 40 CFR Part 60, as in effect on July 1, 2005, except subparts Cb, Cc, Cd, Ce, BBBB and DDDD, which the State has excluded. Additionally, these subparts require state plans which are approved under a separate process pursuant to Section 111(d) of the Act.

(B) Not all authorities of NSPS can be delegated to States under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) approving equivalency determinations and alternative test methods, (2) decision-making to ensure national consistency, and (3) EPA rulemaking in order to implement. Enclosed with this letter is a list of examples of sections in 40 CFR Part 60 related to the NSPS being delegated in this letter that cannot be delegated to the State of Utah.

(C) The Utah Department of Environmental Quality (DEQ) and EPA will continue a system of communication sufficient to guarantee that each office is always kept informed and current regarding compliance status of the subject sources and interpretation of the regulations.

(D) Enforcement of the NSPS in the State will be the primary responsibility of the DEQ. If the DEQ determines that such enforcement is not feasible and so notifies EPA, or where the DEQ acts in a manner inconsistent with the terms of this delegation, EPA may exercise its concurrent enforcement authority pursuant to section 113 of the Act, as amended, with respect to sources within the State of Utah subject to NSPS.

(E) The State of Utah will at no time grant a variance or waiver from compliance with NSPS regulations. Should DEQ grant such a variance or waiver, EPA will consider the source receiving such relief to be in violation of the applicable Federal regulation and initiate enforcement action against the source pursuant to Section 113 of the Act. The granting of such relief by the DEQ shall also constitute grounds for revocation of the delegation by EPA.

(F) If at any time there is a conflict between a State regulation and a Federal regulation (40 CFR Part 60), the Federal regulation must be applied if it is more stringent than that of the State. If the State does not have the authority to enforce the more stringent Federal regulation, this portion of the delegation may be revoked.

(G) If the Regional Administrator determines that a State procedure for enforcing or implementing the NSPS is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DEQ.

(H) Acceptance of this delegation of presently promulgated NSPS does not commit the State of Utah to accept delegation of future standards and requirements. A new request for delegation will be required for any standards not included in the State's request of August 25, 2006.

(I) Upon approval of the Regional Administrator of EPA Region 8, the Director of DEQ may sub-delegate his authority to implement and enforce the NSPS to local air pollution control authorities in the State when such authorities have demonstrated that they have equivalent or more stringent programs in force.

(J) The State of Utah must require reporting of all excess emissions from any NSPS source in accordance with 40 CFR Part 60.7(c).

(K) Performance tests shall be scheduled and conducted in accordance with the procedures set forth in 40 CFR Part 60 unless alternate methods or procedures are approved by the EPA Administrator. Although the Administrator retains the exclusive right to approve equivalent and alternate test methods as specified in 40 CFR Part 60.8(b)(2) and (3), the State may approve minor changes in methodology provided these changes are reported to EPA Region 8. The Administrator also retains the right to change the opacity standard as specified in 40 CFR Part 60.11(e).

(L) Determinations of applicability such as those specified in 40 CFR Part 60.5 and review of plans, as provided for in 40 CFR Part 60.6, shall be consistent with those determinations already made and reviews conducted by the EPA.

(M) Alternatives to continuous monitoring procedures or reporting requirements, as outlined in 40 CFR Part 60.13(i), may be approved by the State with the prior concurrence of the Regional Administrator.

(N) If a source proposes to modify its operation or facility which may cause the source to be subject to NSPS requirements, the State shall notify EPA Region 8 and obtain a determination on the applicability of the NSPS regulations.

(O) Information shall be made available to the public in accordance with 40 CFR Part 60.9. Any records, reports, or information provided to, or otherwise obtained by, the State in accordance with the provisions of these regulations shall be made available to the designated representatives of EPA upon request.

(P) All reports required pursuant to the delegated NSPS should not be submitted to the EPA Region 8 office, but rather to the DEQ.

(Q) As 40 CFR Part 60 is updated, Utah should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegation of authority.

EPA is approving Utah's request for NSPS delegation for all areas within the State except for the following: lands within the exterior boundaries of the Skull Valley, Paiute, Navajo, Goshute, White Mesa, and Northwestern Shoshoni Indian Reservations; Indian country lands within the Uintah and Ouray Indian Reservation; and any other areas which are ''Indian Country'' within the meaning of 18 U.S.C. 1151.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Utah will be deemed to accept all the terms of this delegation. EPA will publish an information notice in the **Federal Register** in the near future to inform the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please contact me at (303) 312–6241 or have your staff contact Richard Long, Director of our Air and Radiation Program, at (303) 312–6005, or toll-free at 1–800–227–8917.

Sincerely,

Carol L. Campbell for Stephen S. Tuber
Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance

Enclosure

cc: Richard W. Sprott, Director, Division of Air Quality

Enclosure to Letter Delegating NSPS in 40 CFR Part 60, Effective Through July 1, 2005, to the State of Utah

Examples of Authorities in 40 CFR Part 60 Which Cannot Be Delegated

40 CFR Subparts	Sections
A	60.8(b)(2) and (b)(3), and those sections throughout the standards that reference 60.8(b)(2) and (b)(3); 60.11(b) and (e).
Da	60.45a.
Db	60.44b(f), 60.44b(g) and 60.49b(a)(4).
Dc	60.48c(a)(4).
Ec	60.56c(i), 60.8
J	60.105(a)(13)(iii) and 60.106(i)(12).
Ka	60.114a.
Kb	60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii).
O	60.153(e).
S	60.195(b).
DD	60.302(d)(3).
GG	60.332(a)(4).
VV	60.482–1(c)(2) and 60.484.
WW	60.493(b)(2)(i)(A) and 60.496(a)(1).
XX	60.502(e)(6).
AAA	60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e) and 60.539.
BBB	60.543(c)(2)(ii)(B).
DDD	60.562–2(c).
GGG	60.592(c).

EXAMPLES OF AUTHORITIES IN 40 CFR PART 60 WHICH CANNOT BE DELEGATED—Continued

40 CFR Subparts	Sections
III	60.613(e).
JJJ	60.623.
KKK	60.634.
NNN	60.663(f).
QQQ	60.694.
RRR	60.703(e).
SSS	60.711(a)(16), 60.713(b)(1)(i) and (ii), 60.713(b)(5)(i), 60.713(d), 60.715(a) and 60.716.
TTT	60.723(b)(1), 60.723(b)(2)(i)(C), 60.723(b)(2)(iv), 60.724(e) and 60.725(b).
VVV	60.743(a)(3)(v)(A) and (B), 60.743(e), 60.745(a) and 60.746.
WWW	60.754(a)(5).
CCCC	The authorities identified in 60.2030(c).

IV. Section 110(l) of the Clean Air Act

Section 110(l) of the Clean Air Act states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement of the National Ambient Air Quality Standards (NAAQS) or any other applicable requirements of the Act. The revisions are administrative in nature, will not affect emissions, and will not interfere with requirements of the Act. Therefore, these revisions do not interfere with attainment or maintenance of the NAAQS or other applicable requirements of the Act.

V. Final Action

EPA is approving a SIP revision submitted by the Governor of Utah on August 15, 2001. This SIP revision deletes rules R307–102–3, ''Administrative Procedures and Hearings,'' and R307–414–3, ''Request for Review.'' We are removing Utah's rules R307–102–3 and R307–414–3 from Utah's federally approved SIP. The Clean Air Act (CAA) does not require these rules to be in Utah's SIP. The specific changes being approved in this document are explained in more detail above (see III.A., and III.B.).

In addition, as requested by the Utah Governor with his August 25, 2006 submittal, we are providing notice that we granted delegation of authority to Utah on November 8, 2006, to implement and enforce the NSPS promulgated in 40 CFR part 60, effective as of July 1, 2005 (except subparts Cb, Cd, Cd, Ce, BBBB, and DDDD). However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as indicated in the delegation letter to the state (see III.C.).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective April 2, 2007 without further notice unless the Agency receives adverse comments by March 5, 2007. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VI. Statutory and Executive Order Reviews

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

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

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

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

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 2, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Zinc.

Dated: January 22, 2007.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ For the reasons stated in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart TT—Utah

■ 2. Section 52.2352 is amended by adding paragraph (e) to read as follows:

§ 52.2352 Change to approved plan.

* * * * *

(e) Utah Administrative Code (UAC) rule R307–102–3, Administrative Procedures and Hearings, and R307–414–3, Request for Review, are removed from Utah's approved State Implementation Plan (SIP). These provisions are not required by the CAA and are, therefore, not required to be in Utah's SIP. These provisions were last approved in 40 CFR 52.2320(c)(59)(i)(A).

PART 60—[AMENDED]

■ 3. The authority citation for part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 4. In § 60.4(c), amend the table entitled ''Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]'' by revising the entries for subpart ''AAAA'' and ''CCCC'' to read as follows:

§ 60.4 Addresses.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for region VIII]

Subpart	CO	MT	ND	SD	UT	WY
* * * *	*		*		*	
AAAA-Small Municipal Waste Combustors	.....	(*)	(*)	.....	(*)	(*)
CCCC-Commercial and Industrial Solid Waste Incineration Units	.....	(*)	(*)	.....	(*)	(*)

(*) Indicates approval of State regulation.

* * * * *

[FR Doc. E7–1619 Filed 1–31–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R02–RCRA–2006–0804; FRL–8275–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (also, ''EPA'' or ''the Agency'' or ''we'') in this preamble is granting a petition submitted by General Electric (GE), King of Prussia, Pennsylvania, to exclude (or delist), on a one-time basis, certain solid wastes that have been deposited and/or accumulated in two on-site drying beds and two on-site basins at GE's RCA del Caribe facility in Barceloneta, Puerto Rico from the lists of hazardous wastes contained in the regulations. These drying beds and basins were used exclusively for disposal of its chemical etching wastewater treatment plant (WWTP) sludge.

This action is specific to the RCA del Caribe site, bears no precedential effect on other delistings and conditionally excludes the petitioned waste from the list of hazardous wastes only if the waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a State or Commonwealth to manage industrial solid waste. The exclusion was proposed on March 19, 2004.

DATES: *Effective Date:* February 1, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–RCRA–2006–0804. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the RCRA Programs Branch, Division of Environmental Planning and Protection, U.S. Environmental Protection Agency,

Region 2, 290 Broadway, New York, New York 10007–1866, and are available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call Ernst J. Jabouin at (212) 637–4104 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general and technical information about this final rule, contact Ernst Jabouin, RCRA Program Branch (2DEPP–RPB), U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866 or call (212) 637–4104.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Background
A. What Is a Delisting Petition, and What Does It Require of Petitioner?
B. What Regulations Allow a Waste To Be Delisted?
II. GE's Delisting Petition
A. What Wastes Did GE Petition the EPA To Delist?
B. What Information Must the Generator Supply?
C. What Information Did GE Submit To Support This Petition?
III. Public Comments Received on the Proposed Exclusion
A. Who Submitted Comments on the Proposed Rule
B. Comments Received and Responses From EPA
IV. EPA's Evaluation and Final Rule
A. What Decision Is EPA Finalizing and Why?
B. What Are the Terms of This Exclusion?
C. When Is the Delisting Effective?
D. How Does This Action Affect the States?
V. Statutory and Executive Order Reviews

I. Background

A. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to the EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions the EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which the EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under 40 CFR 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if the EPA has ''delisted'' the waste.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20 and 260.22, a generator may petition the EPA to remove its waste from hazardous waste control by excluding it from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste on a ''generator specific'' basis from the hazardous waste lists.

II. GE's Delisting Petition

A. What Wastes Did GE Petition the EPA To Delist?

On November 20, 1997, GE petitioned EPA Region 2 to exclude an estimated volume of hazardous wastes ranging from 5,000 to 15,000 cubic yards from the list of hazardous wastes contained in 40 CFR 261.31. These wastes were generated and disposed of at GE's facility in Barceloneta, PR, formerly known as the RCA del Caribe facility. This facility was on EPA's National Priority List and was the subject of a Superfund Remedial Investigation, Feasibility Study and Record of Decision. The wastes are described in GE's petition as EPA Hazardous Waste Number F006 wastewater treatment sludge that was generated from chemical etching operation and accumulated in two drying beds and two basins where the sludge mixed with soil. F006 is defined as ''Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.'' The constituents of concern for which F006 is listed are cadmium, hexavalent chromium, nickel and complexed cyanide.

B. What Information Must the Generator Supply?

A generator must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the Administrator must determine that such factors do not warrant retaining the waste as hazardous.

C. What Information Did GE Submit To Support This Petition?

To support its petition, GE submitted (1) Descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, including historical information on past waste generation and management practices; (2) detailed chemical and physical analysis of the sludge; and (3) environmental monitoring data from past and recent studies of the facility, including groundwater data from wells located around the two drying beds and two basins. GE also submitted a signed certification of accuracy and responsibility statement set forth in 40 CFR 260.22(i)(12). By this certification, GE attests that all submitted information is true, accurate and complete.

III. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule

The EPA received public comments on the proposed notice published on March 19, 2004 from General Electric Company, King of Prussia, PA (GE), the petitioner, and by postcard from an individual in New Jersey.

B. Comments Received and Responses From EPA

Comment: GE stated that the in-place verification sampling for the petitioned waste should not be required since: (1) GE met the criteria for waste characterization with prior sampling and EPA approved the delisting based on the prior sampling; (2) GE filed a signed certification of accuracy and responsibility statement pursuant to 40 CFR 260.22(i)(12); (3) conditions at the facility did not change in a manner that would suggest that the petitioned waste's characteristics have changed since the prior sampling was conducted; (4) the sampling EPA included in the proposed rule was nearly identical to the sampling that GE had already conducted, and which EPA previously

approved as a representative sampling protocol for the petitioned waste, and (5) EPA correspondence and guidance did not support the need for the verification sampling that was listed in the proposed rule.

Response: EPA agrees that, as a ''one-time'' standard exclusion, the previous waste characterization is sufficient and that no in-place verification sampling needs to be performed. Under a closure plan, EPA has required post-excavation sampling by GE to show that the sludge and sludge mixed with soil have been removed and there is no waste remaining in the units at the facility.

Comment: GE stated that the Final Rule should be based upon a cumulative risk analysis, and specific delisting levels for individual constituents should not be included in the Final Rule.

Response: EPA believes it is not necessary to address this comment since GE's wastes passed both cumulative risk analysis and specific delisting levels for individual constituents. EPA also agrees that, for a ''one-time'' standard exclusion, the Agency does not need to report delisting levels in the final rule.

Comment: GE stated that EPA should reevaluate the individual delisting levels for arsenic for three reasons: (1) Arsenic was not used in the manufacturing process and should be regarded as a background constituent that is not subject to regulation; (2) EPA has considered the presence of naturally occurring arsenic and has acknowledged that delisting levels for arsenic should be calculated based on the point-of-exposure (POE) concentration allowed by the Maximum Concentration Limit (MCL); and (3) since the individual delisting levels are directly related to the amount of waste being delisted, EPA inappropriately used the total amount of waste (15,000 cu. yards) in the Delisting Risk Assessment Software (DRAS) to calculate the individual delisting level for arsenic, rather than the amount of waste petitioned to be delisted from the basins only. As arsenic found in the drying beds and basins is likely due to the inadvertent mixing of native soil with the sludge, EPA should have excluded the volume of material outside the drying beds and basins entirely.

Response: GE's wastes passed the arsenic level identified as the delisting level in the proposed rule. As a result, EPA believes it is not necessary to address these comments.

Comment: The proposed rule inappropriately included a statement that the ''exclusion does not change the regulatory status of the drying beds and on-site basins at the facility in Barceloneta, Puerto Rico where the waste has been disposed.'' This statement is unnecessary as it is immaterial to the Rule being proposed, namely whether the petitioned waste should be excluded. GE has previously corresponded with EPA regarding the regulatory status of the drying beds and basins, and expects that EPA will address that issue in a separate context. Since the comment is immaterial to the Proposed Rule, it should be removed from the Final Rule.

Response: EPA is not including this statement in the final rule as its inclusion is not critical in the particular circumstances of this site. GE has submitted a plan entitled ''Clean Closure Plan for Waste Units—Former RCA Del Caribe Facility'' (the ''Plan''), which EPA believes will achieve clean closure of the units.

Comment: EPA must do independent tests. GE polluted the Hudson River horribly so to rely on this company's representation on what is hazardous and what is not seems ludicrous. They have polluted before! GE prefers to spend its money on Jack Welch not being careful on the earth! The testing listed seems far too little to be acceptable. Page 5 details what the waste is NOT FROM rather than focusing on where the waste is FROM! Public is NOT being told exactly what origin/processes are involved. Is this withholding of information deliberate? Chromium is extremely TOXIC! I recommend holding GE to much stricter standards.

Response: The waste is F006 wastewater treatment sludge that was generated from chemical etching operation. The tests of the waste conducted by GE have been independently validated by independent validators. Also, as stated above in paragraph II.C., GE has signed a certification of accuracy and responsibility statement set forth in 40 CFR 260.22(i)(12). By this certification, GE attests that all submitted information is true, accurate and complete. GE analyzed the wastes and groundwater for arsenic, barium, cadmium, chromium, hexavalent chromium, lead, mercury, nickel, selenium, and silver; for Appendix IX Volatile Organic Compounds (VOCs); and, for Appendix IX Semi-Volatile Organic Compounds (SVOCs). Characteristic testing of soil and sludge samples also included analysis of ignitability and corrosivity. EPA believes appropriate standards have been satisfied.

IV. EPA's Evaluation and Final Rule

A. What Decision Is EPA Finalizing and Why?

Today the EPA is finalizing an exclusion for an estimated volume ranging from 5,000 to 15,000 cubic yards of WWTP sludge resulting from the chemical etching operation at its facility in RCA del Caribe in Barceloneta, Puerto Rico.

GE petitioned EPA to exclude, or delist, the WWTP sludge because GE believes that the petitioned waste does not meet the criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22.

On March 19, 2004, EPA proposed to exclude or delist GE's WWTP sludge resulting from the chemical etching operation from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (69 FR 12995). EPA considered all comments received, and we believe that this waste should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

GE must dispose of the WWTP sludge resulting from the chemical etching operation at its facility in Barceloneta, PR, formerly known as the RCA del Caribe facility, in a Subtitle D landfill which is permitted, licensed, or registered by a State or Commonwealth to manage industrial waste. Any amount of WWTP sludge which is in excess of 15,000 cubic yards is not considered delisted under this exclusion. This exclusion is effective only if all conditions contained in today's rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective February 1, 2007. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States or the Commonwealth?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States or Commonwealth subject to Federal

RCRA delisting provisions would be affected. This would exclude States or Commonwealth who have received authorization from the EPA to make their own delisting decisions.

EPA allows the States or the Commonwealth of Puerto Rico to impose their own non-RCRA regulatory requirements that are more stringent than the EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State or Commonwealth. Because a dual system (that is, both Federal (RCRA) and State or Commonwealth (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioner to contact the pertinent State or the Commonwealth regulatory authority to establish the status of its wastes under the State or Commonwealth law.

EPA has also authorized some States to administer a delisting program in place of the federal program to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If GE transports the petitioned waste to or manages the waste in any State with delisting authorization, GE must obtain a delisting from that State before it can manage the waste as nonhazardous in the State. Delisting petitions approved by the EPA Administrator under 40 CFR 260.22 are effective only after the final rule has been published in the **Federal Register.**

V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, 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, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. 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 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties, 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Section 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: January 26, 2007.

Walter Mugdan,

Director, Division of Environmental Planning and Protection, Region 2.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

40 CFR Part 261, Appendix IX

■ 2. Table 1 of appendix IX of part 261 is amended by adding the following entry in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	*	* * * *
GE's Former RCA del Caribe	Barceloneta, PR	Wastewater treatment plant (WWTP) sludges from chemical etching operation (EPA Hazardous Waste No. F006) and contaminated soil mixed with sludge. This is a one-time exclusion for a range of 5,000 to 15,000 cubic yards of WWTP sludge on condition of disposal in a Subtitle D landfill. This exclusion was published on February 1, 2007. 1. Reopener Language—(a) If, anytime after disposal of the delisted waste, GE discovers that any condition or assumption related to the characterization of the excluded waste which was used in the evaluation of the petition or that was predicted through modeling is not as reported in the petition, then GE must report any information relevant to that condition or assumption, in writing, to the Director of the Division of Environmental Planning and Protection in Region 2 within 10 days of first of discovering that information. (b) Upon receiving information described in paragraph (a) of this section, regardless of its source, the Director will determine whether the reported condition requires further action. Further action may include repealing the exclusion, modifying the exclusion, or other appropriate action deemed necessary to protect human health or the environment. 2. Notifications—GE must provide a one-time written notification to any State or Commonwealth Regulatory Agency in any State or Commonwealth to which or through which the waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the waste exclusion and a possible revocation of the decision.
* * *	*	* * * *

[FR Doc. E7–1618 Filed 1–31–07; 8:45 am]
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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511, 516, 532, 538, 546, and 552

[Amendment 2007–01; GSAR Case 2006–G522; Change 18 Docket 2007–0003, Sequence 1]

RIN 3090–AI32

General Services Acquisition Regulation; Federal Supply Schedule Contracts-Recovery Purchasing by State and Local Governments Through Federal Supply Schedules

AGENCY: Office of the Chief Acquisition Officer, Contract Policy Division, General Services Administration (GSA).

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 833 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster, terrorism or nuclear, biological, chemical, or radiological attack.

DATES: *Effective Date:* February 1, 2007.

Comment Date: Interested parties should submit comments in writing to the Regulatory Secretariat at the address shown below on or before April 2, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by Amendment 2007–01, GSAR case 2006–G522, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for any document by first selecting the proper document types and selecting ''General Services Administration'' as the agency of choice. At the ''Keyword'' prompt, type in the GSAR case number (for example, GSAR case 2006–G522) and click on the ''Submit'' button. Please include any personal and/or business information inside the document.

You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''General Services Administration,'' and typing the GSAR case number in the keyword field. Select the ''Submit'' button.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR case 2006–G522, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813, for clarification of content. Please cite Amendment 2007–01, GSAR case 2006–G522. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Supply Schedule Program, which is directed and managed by GSA, is designed to provide Federal agencies with a simplified process of acquiring commonly used commercial supplies and services at prices associated with volume buying. Ordering activities conduct streamlined competitions among a number of schedule contractors, issue orders directly with the selected contractor, and administer orders.

This interim rule amends GSAR Parts 511, 516, 532, 538, 546, and 552 to implement Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 833 amends 40 U.S.C. 502

to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. Section 833 requires the Secretary of Homeland Security to determine which products and services qualify before the Administrator provides for the use of the Federal Supply Schedules. House Report 109–452 of the Committee on Armed Services indicates that Section 833 builds on the implementation of the Cooperative Purchasing Program authorized in Section 211 of the E-Government Act of 2002 (Pub. L. 107–347), which opened GSA's information technology schedule, Schedule 70, for use by State and local governments.

''State and local government entities,'' means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) ''Local educational agency'' has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) ''Institution of higher education'' has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) ''Tribal government'' means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

Eligible state or local government ordering activities are encouraged to use the ordering procedures outlined in Federal Acquisition Regulation (FAR) Subpart 8.4 (48 CFR Chapter 1, Subpart 8.4) when placing an order against Federal Supply Schedules contracts.

This interim rule establishes a new GSAR Subpart 538.71 and amends associated clauses to address recovery purchasing from supply schedules by eligible non-federal organizations. Among other things, the rule defines the scope of recovery purchasing, its usage, and applicable terms and conditions, including payment and the handling of disputes.

Scope. State and local governments are authorized to use Federal Supply Schedules to procure products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack. This authority is limited to GSA's Multiple Award Schedule contracts and does not include any other GSA programs. A listing of the Federal Supply Schedules for the products and services is available in GSA's Schedules e-Library at Web site *http://www.gsaelibrary.gsa.gov.* The State or local government ordering activity is responsible for ensuring that only authorized representatives of their governments place orders and that purchased products or services are used to facilitate recovery from major disasters or attacks for the purposes stated in Section 833.

Voluntary use. The authority provided in this rule is available for use on a voluntary (*i.e.*, non-mandatory) basis. In other words, businesses with schedule contracts which contain items for recovery purchasing have the option of deciding whether they will accept orders placed by State or local government buyers. Existing schedule contracts which contain items for recovery purchasing may be modified only by mutual agreement of the parties. After an existing contract has been modified, a schedule contractor still retains the right to decline orders by State or local government buyers on a case-by-case basis. Future schedule contractors will also be able to decline orders on a case-by-case basis. Schedule contractors may decline any order, for any reason, within a 5-day period of receipt of the order (See GSAR 552.238–78). Similarly, the rule places no obligation on State and local government buyers. They will have full discretion to decide if they wish to make a Federal Supply Schedule purchase, subject, however, to any limitations that may be established under State and local law and procedures.

Defined terms and conditions. Under new GSAR clause 552.238–80, Use of Federal Supply Schedule Contracts by Certain Entities-Recovery Purchasing, which will be incorporated into covered schedule contracts of participating contractors, a new contract will be formed when the schedule contractor accepts an order from a State or local government. However, with certain exceptions provided in this rule, terms and conditions of the underlying schedule contract will be incorporated by reference into the new contract between the State or local government and the contractor. A State and local government ordering activity may include terms and conditions required by statute, ordinance, regulation, or order to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract.

With respect to payment, this rule amends the GSAR to make the clause at 552.232–81, Payments by Non-Federal Ordering Activities, applicable to Federal Supply Schedules for recovery purchasing. The clause provides that the terms and conditions of a State's prompt payment law apply to orders placed by eligible non-Federal ordering activities. If the ordering activity is not otherwise subject to a State prompt payment law, the activity would be covered by the Federal Prompt Payment Act, 31 U.S.C. 3901, *et seq.*, as implemented in FAR Subpart 32.9, in the same manner as Federal ordering activities.

The Federal Government will not be liable for the performance or nonperformance of contracts established under the authority of this rule between schedule contractors and eligible non-federal entities. Disputes that cannot be resolved by the parties to the new contract can be litigated in any State or Federal court with jurisdiction over the parties, using principles of Federal procurement law and the Uniform Commercial Code, as applicable and appropriate.

The prices of supplies and services available on schedule contracts include an industrial funding fee. The fee covers the administrative costs incurred by GSA to operate the Schedules program. The fee will be periodically adjusted as necessary to recover the cost of operating the program.

Advance Purchasing. State and local governments may use the Federal Supply Schedule contracts to purchase products or services in advance of a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act

(42 U.S.C. 5121 *et seq.*) or terrorist, nuclear, biological, chemical, or radiological attack. In the aftermath of emergency events, State or local governments' systems may be disrupted. Thus, use of Federal Supply schedule contracts prior to these events to acquire products or services to be used to facilitate recovery is authorized. The State or local government will be responsible for ensuring that purchased products or services are to be used to facilitate recovery.

Transactional data. GSA anticipates a need for specific information regarding recovery purchasing. Quality transactional data will allow for effective program measurement and improvement. GSA is interested in comments on the schedule contractors' ability to report data elements such as items and quantities sold, prices, and State or local government placing the order. GSA also is interested in hearing industry's perspective on the best way to capture this data.

B. Unfunded Mandates Reform Act and Executive Order 13132

The following statutes and Executive orders do not apply to this rulemaking: Unfunded Mandates Reform Act of 1995; Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; and Executive Order 13132, Federalism.

C. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the interim rule will affect large and small entities including small businesses that are awarded schedule contracts for recovery purchasing, under the GSA Federal Supply Schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under schedule contracts for recovery purchasing.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

1. Description of the reasons why action by the agency is being considered.

To implement section 833, Use of Federal Supply Schedules by State and Local Governments for Goods and Services for Recovery from Natural Disasters, Terrorism, or Nuclear, Biological, Chemical, or Radiological Attack, of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364). Section 833 amends section 502 of title 40, United States Code, to authorize the Administrator to provide for use by State or local governments of Federal Supply Schedules of the General Services Administration for products or services that are to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. The rule opens Federal Supply Schedule contracts for recovery purchasing, for use by other governmental entities to enhance intergovernmental cooperation.

2. Succinct statement of the objectives of, and legal basis for the interim rule.

The interim rule will implement section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109–364) with the objective of opening Federal Supply Schedule contracts for use by other governmental entities to enhance intergovernmental cooperation. The goal of the new rule is to make ''government'' (considering all levels) more efficient by reducing duplication of effort and utilizing volume purchasing techniques for the acquisition products and services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster, terrorism, or nuclear, biological, chemical, or radiological attack.

3. Description of, and where feasible, estimate of the number of small entities to which the interim rule will apply.

The rule will affect large and small entities including small businesses that are awarded schedule contracts for recovery purchasing, under the GSA Federal Supply Schedule program; non-schedule contractors, including small businesses, contracting with State or local governments; and small governmental jurisdictions that will be eligible to place orders under schedule contracts for recovery purchases. Approximately 80 percent (12,494) of GSA Schedule contractors are small businesses and they accounted for 37 percent of the sales under the Schedules program for Fiscal Year 2005. All of the small business contractors under the Schedules for recovery purchasing will be allowed, at the schedule contractor's option, to accept orders from State and local governments. Obviously, the expanded authority to order from Schedule contracts for recovery purchasing could increase the sales of small business schedule contractors. It is difficult to identify the number of non-schedule small businesses that currently sell directly to State and local governments. The ability of governmental entities to use Schedule contracts for recovery purchasing, may affect the competitive marketplace in which those small businesses operate. State and local government agencies could realize lower prices on some products and services, less administrative burden and shortened procurement lead times. The rule does not affect or waive State or local government preference programs. Finally, small governmental jurisdictions will also be affected Counties, incorporated municipalities, minor subdivisions, public housing authorities, school districts, public educational institutions of higher learning, and Indian tribal governments would be among those affected if they chose to order from Schedule contracts for recovery purchasing. Federal Supply Schedule contracts are negotiated as volume purchase agreements, with generally very favorable pricing. The ability of small governmental entities to order from Schedule contracts for recovery purchasing holds out the potential for significant cost savings for those organizations as well as providing alternative sources of goods and services in case their usual and customary sources of supply are interrupted in the aftermath of the disaster.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The interim rule makes changes in certain provisions or clauses in order to recognize the fact that authorized non-federal ordering activities may place orders under the contract. The Office of Management and Budget under the Paperwork Reduction Act has previously approved these clauses and the changes do not impact the information collection or recordkeeping requirements.

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the rule.

The interim rule does not duplicate, overlap, or conflict with any other Federal rules.

6. Description of any significant alternatives to the interim rule that accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the rule on small entities.

There are no practical alternatives that will accomplish the objective of this rule.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the Regulatory Secretariat. The Councils will consider comments from small entities concerning the affected GSAR Parts 511, 516, 532, 538, and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (Amendment 2007–01, GSAR case 2006–G522), in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. The new clause at 552.238–80, Use of Federal Supply Schedule Contracts by Certain Entities-Recovery Purchasing, provides for the contractor to report the quarterly dollar value of all sales under the contract to State and local governments, which includes any State, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning). The records required

for reporting are the same as those normally maintained by a contractor in the commercial world and do not represent a Government-unique recordkeeping requirement. Therefore, the estimated burden for this clause under the Paperwork Reduction Act is zero. GSA has a blanket approval under OMB Control Number 3090–0250 from Office of Management and Budget for information collections with a zero burden estimate.

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Administrator of General Services (GSA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), signed by the President on October 17, 2006. The law requires the Administrator of General Services to establish procedures to implement Section 833 not later than 30 days after the date of the enactment of the Act. GSA wishes to obtain public comments on the changes. Due to the statutory deadline, the rule is being issued as an interim rule rather than as a proposed rule.

Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 511, 516, 532, 538, 546, and 552

Government procurement.

Dated: January 29, 2007.

Roger D. Waldon,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer.

■ Therefore, GSA amends 48 CFR parts 511, 516, 532, 538, 546, and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 511, 516, 532, 538, 546, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 511—USING AND MAINTAINING REQUIREMENTS DOCUMENTS

■ 2. Revise paragraphs (c)(3) and (d) of section 511.204 to read as follows:

511.204 Solicitation provisions and contract clauses.

* * * * *

(c) * * *

(3) Include the clause at 552.211–75, Preservation, Packaging and Packing, in solicitations and contracts for supplies expected to exceed the simplified acquisition threshold. You may also include the clause in contracts estimated to be at or below the simplified acquisition threshold when appropriate. Use Alternate I in solicitations and contracts for—

(i) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(ii) Federal Supply Schedules for recovery purchasing (See 538.7102).

* * * * *

(d) *Supply contracts.* Include the clause at 552.211–77, Packing List, in solicitations and contracts for supplies, including purchases over the micropurchase threshold. Use Alternate I in solicitations and contracts for—

(1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(2) Federal Supply Schedules for recovery purchasing (See 538.7102).

PART 516—INDEFINITE-DELIVERY CONTRACTS

■ 3. Amend section 516.506 by—

■ a. Redesignating paragraph (d) as (e);

■ b. Adding a new paragraph (d); and

■ c. Amending the newly designated paragraph (e) by revising the last sentence.

The added and revised text reads as follows:

516.506 Solicitation provisions and contract clauses.

* * * * *

(d) In solicitations and contracts for Federal Supply Schedules for recovery purchasing (See 538.7102), use 552.216–72, Placement of Orders, Alternate IV, instead of Alternate II.

(e) * * * Use 552.216–73 Alternate II when 552.216–72 Alternate II, Alternate III, or Alternate IV are prescribed.

PART 532—CONTRACT FINANCING

■ 4. Amend section 532.206 by revising paragraphs (a) and (b) to read as follows:

532.206 Solicitation provisions and contract clauses.

(a) *Discounts for prompt payment.* Include 552.232–8, Discounts for Prompt Payments, in multiple award schedule solicitations and contracts instead of the clause at Federal Acquisition Regulation 52.232–8. Use Alternate I in solicitations and contracts for—

(1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers (SINs); or

(2) Federal Supply Schedules for recovery purchasing (See 538.7102).

(b) The contracting officer shall insert the clause at 552.232–81, Payments by Non-Federal Ordering Activities, in solicitations and schedule contracts for—

(1) FSS Schedule 70 and Consolidated Products and Services Schedule contracts containing information technology SINs; or

(2) Federal Supply Schedules for recovery purchasing (See 538.7102).

* * * * *

■ 5. Amend section 532.7003 by revising paragraphs (b) and (c) to read as follows:

532.7003 Contract clause.

* * * * *

(b) Federal Supply Schedule contracts. Use Alternate I of the clause at 552.232–77 for all FSS schedule solicitations and contracts, except for—

(1) Federal Supply Schedule 70, Information Technology, and the Consolidated Products and Services Schedule contracts containing information technology Special Item Numbers; or

(2) Federal Supply Schedule contracts for recovery purchasing (See 538.7102).

(c) *Federal Supply Schedule contracts for information technology Special Item Numbers or Federal Supply Schedules for recovery purchasing (See 538.7102).* In solicitations and contracts for (1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or (2) Federal Supply Schedule contracts for recovery purchasing (See 538.7102), use 552.232–79 instead of 552.232–77.

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 6. Amend section 538.273 by revising paragraphs (a)(2) and (b)(2) to read as follows:

538.273 Contract clauses.

(a) * * *

(2) 552.238–71, Submission and Distribution of Authorized FSS Schedule Pricelists. In solicitations and contracts for:

(i) FSS Schedule 70 and the Consolidated Products and Services Schedule contracts containing information technology Special Item Numbers; or

(ii) Federal Supply Schedule contracts for recovery purchasing (See 538.7102), use Alternate I. If GSA is not prepared to accept electronic submissions for a particular schedule delete—

(A) The paragraph identifier ''(i)'' in (b)(1) and the word ''and'' at the end of paragraph (b)(1)(i); and

(B) Paragraphs (b)(1)(ii) and (b)(3).

* * * * *

(b) * * *

(2) 552.238–75, Price Reductions. Use Alternate I in solicitations and contracts for—

(i) FSS Schedule 70 and the Consolidated Products and Services Schedule contracts containing information technology Special Item Numbers; or

(ii) Federal Supply Schedule contracts for recovery purchasing (See 538.7102).

■ 7. Add Subpart 538.71, consisting of sections 538.7100 thru 538.7104, to read as follows:

Sec.
538.7100 Scope of subpart.
538.7101 Definitions.
538.7102 General.
538.7103 Policy.
538.7104 Solicitation provisions and contract clauses.

Subpart 538.71—Recovery Purchasing

538.7100 Scope of subpart.

This subpart prescribes policies and procedures to implement the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) authorizing non-federal organizations to use Federal Supply Schedule contracts to purchase products and services to be used for recovery from major disasters, terrorism or nuclear, biological, chemical, or radiological attack.

538.7101 Definitions.

The definitions in subsection 538.7001 shall apply for purposes of this subpart.

538.7102 General.

(a) Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack. Section 833 requires the Secretary of Homeland Security to determine which products and services qualify before the Administrator provides for the use of the Federal Supply Schedules. Use of Federal supply schedules by State and local governments is voluntary. Agreement of a schedule contractor to offer recovery purchasing under the contract and acceptance of any order for recovery purchasing from a State or local government is voluntary.

(b) State and local governments are authorized to use Federal Supply Schedules to procure products and services determined by the Secretary of Homeland Security to be used to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack. A listing of the Federal Supply Schedules for the products and services is available in GSA's Schedules e-Library at Web site *http://www.gsaelibrary.gsa.gov.* Click on the link, ''Disaster Recovery Purchasing, State and Local.'' The participating contractors and the products and services available for recovery purchasing will be labeled with the Disaster Recovery Purchasing ICON.

(c) State and local governments that wish to use the Federal Supply Schedules to facilitate recovery from major disasters or attacks are responsible for ensuring that only authorized representatives of their governments place orders against these schedules and that procured products and services are used only for the purposes authorized by Section 833 of Public Law 109–364.

538.7103 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security, for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation (FAR) and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete ''Government'' or similar language referring to the U.S. Government and substitute ''ordering activity'' or similar language when preparing solicitations and contracts to be awarded under the Federal Supply Schedules for products and services determined by the Secretary of Homeland Security. When such changes are made, the word ''(DEVIATION)'' shall be added at the end of the title of the provision or clause. These clauses include but are not limited to—

(a) 52.212–4, Contract Terms and Conditions—Commercial Items.

(b) 52.216–18, Ordering.

(c) 52.216–19, Order Limitations.

(d) 52.229–1, State and Local Taxes.

(e) 52.229–3, Federal, State, and Local Taxes.

(f) 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts.

(g) 52.232–17, Interest.

(h) 52.232–19, Availability of Funds for the Next Fiscal Year.

(i) 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(j) 52.232–36, Payment by Third Party.

(k) 52.237–3, Continuity of Services.

(l) 52.246–4, Inspection of Services-Fixed Price.

(m) 52.246–6, Inspection-Time-and-Material and Labor-Hour.

(n) 52.247–34, F.O.B. Destination.

(o) 52.247–38, F.O.B. Inland Carrier Point of Exportation.

538.7104 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at 552.238–76, Definition (Federal Supply Schedules)—Recovery Purchasing, in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.

(b) The contracting officer shall insert the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities), with Alternate I in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.

(c) The contracting officer shall insert the clause at 552.238–80, Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing, in Federal Supply Schedule solicitations and contracts which contain products and services determined by the Secretary of Homeland Security that facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack.

(d) See 552.101–70 for authorized Federal Acquisition Regulation deviations.

PART 546—QUALITY ASSURANCE

■ 8. Amend section 546.710 by revising paragraph (b) to read as follows:

546.710 Contract clauses.

* * * * *

(b) *Multiple award schedules.* Insert the clause at 552.246–73, Warranty—Multiple Award Schedule, in solicitations and contracts. Use Alternate I in solicitations and contracts for—

(1) FSS Schedule 70 and the Consolidated Products and Services Schedule containing information technology Special Item Numbers; or

(2) Federal Supply Schedules for recovery purchasing (See 538.7102).

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 552.216–72 by—

(a) Removing from the introductory text of Alternate II ''516.506(c)'' and adding ''516.506(b)'' in its place; and

(b) Adding Alternate IV.

The added text reads as follows:

552.216–72 Placement of orders.

* * * * *

Alternate IV (FEB 2007). As prescribed in 516.506(d), substitute the following paragraphs (a), (c), and (d) for paragraphs (a), (c), and (d) of the basic clause:

(a) See 552.238–78, Scope of Contract (Eligible Ordering Activities)—Alternate I, for who may order under this contract.

(c) If the Contractor agrees, GSA's Federal Acquisition Service (FAS) will place orders for eligible ordering activities, as defined in paragraph (a) of the clause at 552.238–78-Alternate I, by EDI using computer-to-computer EDI. If computer-to-computer EDI is not possible, FAS will use an alternative EDI method allowing the Contractor to receive orders by facsimile transmission. Subject to the Contractor's agreement, other eligible ordering activities, as defined in paragraphs (a) and (d) of the clause at 552.238–78-Alternate I, may also place orders by EDI.

(d) When computer-to-computer EDI procedures will be used to place orders, the Contractor shall enter into one or more Trading Partner Agreements (TPA) with each ordering activity placing orders electronically in order to ensure mutual understanding by the parties of certain electronic transaction conventions and to recognize the rights and responsibilities of the parties as they apply to this method of placing orders. The TPA must identify, among other things, the third party provider(s) through which electronic orders are placed, the transaction sets used, security procedures, and guidelines for implementation. Ordering activities may obtain a sample format to customize as needed from the office specified in paragraph (g) of this clause.

552.216–73 [Amended]

■ 10. Amend section 552.216–73 by—

■ (a) Removing from the introductory text ''516.506(c)'' and adding ''516.506(e)'' in its place; and

■ (b) Removing from the introductory text of Alternates I and II ''516.506(b)'' and adding ''516.506(e)'' in its place, respectively.

■ 11. Add section 552.238–76 to read as follows:

552.238–76 Definition (Federal Supply Schedules)—Recovery Purchasing.

As prescribed in 538.7104(a), insert the following clause:

Definition (Federal Supply Schedules)—Recovery Purchasing (FEB 2007)

Ordering activity (also called ''ordering agency'' and ''ordering office'') means an eligible ordering activity (see 552.238–78, Alternate I) authorized to place orders under Federal Supply Schedule contracts.

(End of clause)

■ 12. Amend section 552.238–78 by adding Alternate I to read as follows:

552.238–78 Scope of Contract (Eligible Ordering Activities).

* * * * *

Alternate I (FEB 2007). As prescribed in 538.7104(b), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic clause:

(a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic delivery.

(1) Executive agencies (as defined in Federal Acquisition Regulation Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101–26.000;

(2) Government contractors authorized in writing by a Federal agency pursuant to Federal Acquisition Regulation Subpart 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol);

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 U.S.C. 450j(k);

(7) Qualified Nonprofit Agencies as authorized under 40 U.S.C. 502(b); and

(8) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(d) The following activities may place orders against Federal Supply Schedules for products and services determined by the Secretary of Homeland Security to facilitate recovery from major disasters, terrorism, or nuclear, biological, chemical, or radiological attack, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities: State and local government entities, includes any state, local, regional or tribal government or any instrumentality thereof (including any local educational agency or institution of higher learning).

State and local government entities, means the states of the United States, counties, municipalities, cities, towns, townships, tribal governments, public authorities (including public or Indian housing agencies under the United States Housing Act of 1937), school districts, colleges and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) *Local educational agency* has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) *Institution of higher education* has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) *Tribal government* means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

■ 13. Add new section 552.238–80 to read as follows:

552.238–80 Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing.

As prescribed in 538.7104(c), insert the following clause:

Use of Federal Supply Schedule Contracts by Certain Entities—Recovery Purchasing (FEB 2007)

(a) If an entity identified in paragraph (d) of the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities)—Alternate I, elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies ''Compliance with laws unique to Government contracts'' (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and

conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (e.g., Federal Acquisition Regulation 52.212–4 at paragraph (f) and FSS clause I–FSS–249 B).

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(7) The state or local government ordering activity will be responsible for purchasing products or services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities)—Alternate I, the Contractor agrees to the following conditions—

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause 552.238–74, Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number—

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at 552.238–78, Scope of Contract (Eligible Ordering Activities)—Alternate I; and

(2) The dollar value for sales to entities identified in paragraph (d) of clause 552.238–78, Alternate I.

(d) A listing of the Federal Supply Schedule contracts for the products and services available for disaster recovery purchasing is accessible in GSA's Schedules e-Library at Web site *http://www.gsaelibrary.gsa.gov*. Click on the link, ''Disaster Recovery Purchasing, State and Local.'' The participating Contractors and the products and services available for disaster recovery purchasing will be labeled with the Disaster Recovery Purchasing icon.

(End of clause)

[FR Doc. E7–1641 Filed 1–31–07; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192 and 195

[Docket No. PHMSA–05–21253; Amdt. Nos. 192–103 and 195–86]

RIN 2137–AD68

Pipeline Safety: Update of Regulatory References to Technical Standards

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: PHMSA is amending a final rule published in the **Federal Register** on June 9, 2006, which updated the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices.

DATES: The final rule takes effect on March 5, 2007.

FOR FURTHER INFORMATION CONTACT: Richard D. Huriaux, Director, Technical Standards at (202) 366–4565, by fax at (202) 366–4566, or by e-mail at *richard.huriaux@dot.gov*. Copies of this document or other material in the docket can be reviewed by accessing the Docket Management System's home page at *http://dms.dot.gov*.

General information on the pipeline safety program is available at PHMSA's Web site at *http://phmsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2006, PHMSA published a final rule in the **Federal Register** entitled ''Pipeline Safety: Update of Regulatory References to Technical Standards'' (71 FR 33402). Amendment Nos. 192–103, 193–19, and 195–86 updated references to pipeline-related technical standards and made a number of editorial corrections. We subsequently identified several omissions and editorial corrections in parts 192 and 195. In this correction notice we make the following corrections and edits:

- Three editorial corrections are necessary in § 192.1. The spelling of the word ''apply'' is corrected in the introductory text of paragraph (b), the comma is replaced by a '';'' at the end of paragraph (b)(2), and the comma is replaced by ''; or'' at the end of paragraph (b)(4)(iii). We are restating these entire paragraphs for clarity.
- In Part 192, the restatement of the table of standards incorporated by reference inadvertently deleted API Recommended Practice 80 (API RP 80), ''Guidelines for the Definition of Onshore Gas Gathering Lines'' (1st edition, April 2000). We are restating the list of API standards at § 192.7(c)(2) to properly include API RP 80.
- Paragraph 192.227(a) incorrectly references ''Appendix A.'' We are correcting this to refer to ''§ 192.7'' and restating the entire paragraph for clarity.
- Paragraphs 192.727(g)(2) and 195.59(a) are updated to correctly reference the NPMS homepage at *http://www.npms.phmsa.dot.gov*. We are restating these entire paragraphs for clarity.

• Paragraphs 192.727(g)(1) and 195.59(b) are removed because the April 10, 2001, deadline to report pipeline facilities abandoned before October 10, 2000, has expired.

• Paragraphs 192.727(g)(1), 192.949, 192.951, and 195.59(a) are updated to reference the correct room number for the filing of reports, ''Room 2103.'' We are restating these entire paragraphs for clarity.

• The current version of the gas pipeline safety regulations inadvertently omitted some text in the definition of High consequence area in paragraph § 192.903. This is corrected herein by adding back paragraphs (3) and (4) following paragraph (2)(ii) and updating the agency name.

• In § 192.949 paragraphs (1), (2), and (3) are corrected to read (a), (b), and (c) and the section heading is revised.

• In § 192.951 paragraphs (1), (2), and (3) are corrected to read (a), (b), and (c).

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety.

■ In consideration of the foregoing, PHMSA amends 49 CFR parts 192 and 195 to read as follows:

PART 192—[AMENDED]

■ 1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

■ 2. Paragraphs (b) introductory text, (b)(2), and (b)(4)(iii) of § 192.1 are revised to read as follows:

§ 192.1 What is the scope of this part?

* * * * *

(b) This part does not apply to—

(2) Pipelines on the Outer Continental Shelf (OCS) that are producer-operated and cross into State waters without first connecting to a transporting operator's facility on the OCS, upstream (generally seaward) of the last valve on the last production facility on the OCS. Safety equipment protecting PHMSA-regulated pipeline segments is not excluded. Producing operators for those pipeline segments upstream of the last valve of the last production facility on the OCS may petition the Administrator, or designee, for approval to operate under PHMSA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9;

(4) * * *

(iii) Within inlets of the Gulf of Mexico, except for the requirements in § 192.612; or

* * * * *

■ 3. Paragraph (c)(2), entry B. of § 192.7 is revised to read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

* * * * *

(c) * * *

(2) Documents incorporated by reference.

Source and name of referenced material	49 CFR reference
* * * * *	* *
B. American Petroleum Institute (API):	
(1) API Specification 5L ''Specification for Line Pipe,'' (43rd edition and errata, 2004)	§§ 192.55(e); 192.113; Item I of Appendix B.
(2) API Recommended Practice 5L1 ''Recommended Practice for Railroad Transportation of Line Pipe,'' (6th edition, 2002).	§ 192.65(a).
(3) API Specification 6D ''Pipeline Valves,'' (22nd edition, January 2002)	§ 192.145(a).
(4) API Recommended Practice 80, ''Guidelines for the Definition of Onshore Gas Gathering Lines,'' (1st edition, April 2000).	§ 192.8(a); 192.8(a)(1); 192.8(a)(2); 192.8(a)(3); 192.8(a)(4).
(5) API 1104 ''Welding of Pipelines and Related Facilities,'' (19th edition, 1999, including Errata October 31, 2001).	§§ 192.227(a); 192.229(c)(1); 192.241(c); Item II, Appendix B.
(6) API Recommended Practice 1162 ''Public Awareness Programs for Pipeline Operators,'' (1st edition, December 2003).	§§ 192.616(a); 192.616(b); 192.616(c).
* * * * *	* *

■ 4. Paragraph (a) of § 192.227 is revised to read as follows:

§ 192.227 Qualification of welders.

(a) Except as provided in paragraph (b) of this section, each welder must be qualified in accordance with section 6 of API 1104 (incorporated by reference, see § 192.7) or section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference, see § 192.7). However, a welder qualified under an earlier edition than listed in § 192.7 of this part may weld but may not requalify under that earlier edition.

* * * * *

■ 5. Paragraph (g)(1) of § 192.727 is revised and paragraph (g)(2) is removed to read as follows:

§ 192.727 Abandonment or deactivation of facilities.

* * * * *

(g) * * *

(1) The preferred method to submit data on pipeline facilities abandoned after October 10, 2000 is to the National Pipeline Mapping System (NPMS) in accordance with the NPMS ''Standards for Pipeline and Liquefied Natural Gas Operator Submissions.'' To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at *http://www.npms.phmsa.dot.gov* or contact the NPMS National Repository at 703–317–3073. A digital data format is preferred, but hard copy submissions are acceptable if they comply with the NPMS Standards. In addition to the NPMS-required attributes, operators must submit the date of abandonment, diameter, method of abandonment, and certification that, to the best of the operator's knowledge, all of the reasonably available information requested was provided and, to the best of the operator's knowledge, the abandonment was completed in accordance with applicable laws. Refer to the NPMS Standards for details in preparing your data for submission. The NPMS Standards also include details of how to submit data. Alternatively,

operators may submit reports by mail, fax or e-mail to the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Room 2103, 400 Seventh Street, SW., Washington, DC 20590; fax (202) 366–4566; e-mail, *roger.little@dot.gov.* The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

(2) [Reserved].

■ 6. Section 192.903 is amended by adding paragraphs (3) and (4) of ''High consequence area'' to read as follows:

§ 192.903 What definitions apply to this subpart?

* * * * *

High consequence area means an area established by one of the methods described in paragraphs (1) or (2) as follows:

* * * * *

(3) Where a potential impact circle is calculated under either method (1) or (2) to establish a high consequence area, the length of the high consequence area extends axially along the length of the pipeline from the outermost edge of the first potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy to the outermost edge of the last contiguous potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy. (See Figure E.I.A. in Appendix E.)

(4) If in identifying a high consequence area under paragraph (1)(iii) of this definition or paragraph (2)(i) of this definition, the radius of the potential impact circle is greater than 660 feet (200 meters), the operator may identify a high consequence area based on a prorated number of buildings intended for human occupancy with a distance of 660 feet (200 meters) from the centerline of the pipeline until December 17, 2006. If an operator chooses this approach, the operator must prorate the number of buildings intended for human occupancy based on the ratio of an area with a radius of 660 feet (200 meters) to the area of the potential impact circle (i.e., the prorated number of buildings intended for human occupancy is equal to $20 \times$ (660 feet) [or 200 meters]/potential impact radius in feet [or meters] ^{2}).

* * * * *

■ 7. Paragraphs (1), (2), and (3) of § 192.949 are redesignated to read as (a), (b), (c) and the section heading is revised:

§ 192.949 How does an operator notify PHMSA?

* * * * *

(a) Sending the notification to the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Room 2103, 400 Seventh Street, SW., Washington, DC 20590;

(b) Sending the notification by fax to (202) 366–4566; or

(c) Entering the information directly on the Integrity Management Database (IMDB) Web site at *http://primis.phmsa.dot.gov/gasimp/.*

■ 8. Paragraphs (1), (2), and (3) of § 192.951 are redesignated to read as (a), (b), and (c):

§ 192.951 Where does an operator file a report?

* * * * *

(a) By mail to the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Room 2103, 400 Seventh Street SW., Washington, DC 20590;

(b) Via fax to (202) 366–4566; or

(c) Through the online reporting system provided by PHMSA for electronic reporting available at the PHMSA Home Page at *http://phmsa.dot.gov.*

PART 195—[AMENDED]

■ 1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

■ 2. Paragraph (a) and the section heading of § 195.59 is revised and paragraph (b) is removed, to read as follows:

§ 195.59 Abandonment or deactivation of facilities.

* * * * *

(a) The preferred method to submit data on pipeline facilities abandoned after October 10, 2000 is to the National Pipeline Mapping System (NPMS) in accordance with the NPMS ''Standards for Pipeline and Liquefied Natural Gas Operator Submissions.'' To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at *http://www.npms.phmsa.dot.gov* or contact the NPMS National Repository at 703–317–3073. A digital data format is preferred, but hard copy submissions are acceptable if they comply with the NPMS Standards. In addition to the NPMS-required attributes, operators must submit the date of abandonment, diameter, method of abandonment, and certification that, to the best of the operator's knowledge, all of the reasonably available information requested was provided and, to the best of the operator's knowledge, the abandonment was completed in accordance with applicable laws. Refer to the NPMS Standards for details in preparing your data for submission. The NPMS Standards also include details of how to submit data. Alternatively, operators may submit reports by mail, fax or e-mail to the Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Room 2103, 400 Seventh Street, SW., Washington, DC 20590; fax (202) 366–4566; e-mail, *roger.little@dot.gov.* The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws.

(b) [Reserved].

Issued in Washington, DC on January 24, 2007.

Stacey L. Gerard,

Acting Deputy Administrator.

[FR Doc. E7–1652 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–7021–39; I.D. 012507B]

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

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in

an area totaling approximately 2,185 nm^2 (7,494 km^2), east of Portland, ME for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours February 5, 2007, through 2400 hours February 20, 2007.

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

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

SUPPLEMENTARY INFORMATION:

Electronic Access

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

Background

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

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

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On January 22, 2007, an aerial survey reported a sighting of thirty right whales in the proximity 43° 22′ N. lat. and 68° 21′ W. long. This position lies east of Portland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

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

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

The DAM Zone is bound by the following coordinates:

43° 48′ N., 68° 55′ W. (NW Corner)
43° 48′ N., 67° 51′ W.
43° 01′ N., 67° 51′ W.
43° 01′ N., 68° 55′ W.
43° 48′ N., 68° 55′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/Pot Gear

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

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

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

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

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

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours February 5, 2007, through 2400 hours February 20, 2007, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

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

Classification

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

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

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

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

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

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

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

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

Dated: January 26, 2007.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 07–441 Filed 1–29–07; 2:25 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 21
Thursday, February 1, 2007

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AI03

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS® System Revision 9

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc., Standardized NUHOMS® System listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 9 to the Certificate of Compliance (CoC) Number 1004. Amendment No. 9 would modify the CoC by revising Technical Specifications 1.2.1 and 1.2.14 to add the Framatome-ANP, Version 9x9–2 fuel assemblies (FANP9x9–2) as approved contents for storage in the NUHOMS®-61BT dry shielded canister, under the general provisions of 10 CFR part 72.

DATES: Comments on the proposed rule must be received on or before March 5, 2007.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AI03) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comment will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://rulemaking.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays [telephone (301) 415–1966].

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* An electronic copy of the proposed CoC No. 1004, proposed Technical Specifications (TS), and preliminary safety evaluation report (SER) for Amendment No. 9 can be found under ADAMS Accession Nos. ML062830065, ML062830067, and ML062830069.

The proposed CoC No. 1004, the proposed TS, the preliminary SER for Amendment No. 9, and the Environmental Assessment (EA) are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 9 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on April 17, 2007. However, if the NRC receives significant adverse comments by March 5, 2007, then the NRC will publish a document that withdraws the direct final rule and will subsequently address the comments received in a final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or Technical Specifications.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: January 7, 2004.

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

Amendment Number 8 Effective Date: December 5, 2005.

Amendment Number 9 Effective Date: April 17, 2007.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: NUHOMS®–24P, –52B, –61BT, –32PT, –24PHB, and –24PTH.

* * * * *

Dated at Rockville, Maryland, this 19th day of January, 2007.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E7–1643 Filed 1–31–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE254; Notice No. 23–06–06–SC]

Special Conditions: Aviation Technology Group (ATG), Inc.; Javelin Model 100 Series Airplane; Acrobatic Spins

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Aviation Technology Group (ATG) Javelin Model 100 Series airplane. This airplane will have a novel or unusual design feature(s) associated with acrobatic spin recovery requirements. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards applicable to these airplanes.

DATES: Comments must be received on or before March 5, 2007.

ADDRESSES: Comments on these proposed special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket CE254, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE254. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4125, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on

which the following statement is made: ''Comments to Docket No. CE254.'' The postcard will be date stamped and returned to the commenter.

Background

On February 15, 2005, Aviation Technology Group (ATG); 8001 South InterPort Boulevard, Suite 310; Englewood, Colorado 80112–5951, applied for a type certificate for their new Model 100 airplane. ATG intends to certificate the Javelin in both utility and acrobatic categories. The preliminary design includes the following features:

- Two-place, tandem configuration.
- Maximum takeoff weight of approximately 6,900 pounds.
- Design cruise speed of 500 knots calibrated airspeed.
- Two Williams FJ33–4A–18M turbofan engines with dual channel FADEC controls.
- Major airframe components constructed of carbon fiber composite materials.
- Hydraulically boosted flight control system with floor-mounted control sticks.
- Integrated avionics including electronic displays, autopilot, and flight management system.

Title 14 CFR, part 23, § 23.221 contains spin requirements for normal, utility, and acrobatic category airplanes. When part 3 of the Civil Air Regulations was recodified in 1965 as 14 CFR, part 23, spin requirements for acrobatic category airplanes were presented in § 23.221(c). Since 1965, the spin requirements in § 23.221(c) have been amended three times.

The original version of § 23.221(c) required an acrobatic category airplane to perform spins of at least six turns and recover without exceeding an airspeed limit or positive load factor limit. Spins were required for flaps-up configuration and flaps-down configuration. In addition, the airplane could not enter an uncontrollable spin with any use of the controls.

Amendment 23–7 revised the presentation of the acrobatic category spin requirements and revised the minimum turn requirement to six turns or three seconds, whichever takes longer. Amendment 23–42 revised § 23.221(c)(3) and clarified the term ''controls'' in the previous version of the rule by identifying flight controls and engine controls. It also clarified that the use of the controls could be at spin entry or during the spin. Neither of these two amendments changed the basic acrobatic category spin requirements.

In July 1994, the FAA proposed changes to the flight airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. The proposals arose from the joint effort of the FAA and the European Joint Aviation Authorities (JAA) to harmonize 14 CFR regulations and the Joint Aviation Requirements (JAR). The proposed changes were intended to provide nearly uniform flight airworthiness standards for airplanes certificated in the United States under 14 CFR, part 23 and in the JAA countries under JAR 23.

Proposed changes to the introductory paragraph of § 23.221(c) required acrobatic category airplanes to meet the one-turn spin requirements of § 23.221(a) as well as the emergency egress requirements of § 23.807, and to meet the spin requirements of §§ 23.221(c)(1) through (4) in each configuration approved for spins. The addition of normal category spin requirements was necessary because acrobatic category airplanes should have sufficient controllability to recover from the developing one-turn spin under the same conditions as normal category airplanes. The configuration requirement was added to recognize the common practice of approving intentional spins only for a specific configuration (e.g, gear and flaps up). The proposed changes were incorporated into the rule by Amendment 23–50.

There was never any discussion or intent by the FAA or JAA to approve an acrobatic category airplane that met only the normal category spin requirements. The assumption has always been that an inadvertent spin could result during the performance of a variety of acrobatic maneuvers.

FAA Position

Title 14 CFR, part 23, § 23.221(c), as amended by Amendment 23–50, presents acrobatic category airplane spin requirements. As the rule is currently written, the acrobatic category airplane must comply with normal category spin requirements, acrobatic category emergency egress requirements in § 23.807, and acrobatic spin requirements for each configuration requested for spin approval.

ATG proposes to prohibit intentional spins and requests that no configuration be approved for spins. This proposal leads to an acrobatic category airplane that meets only normal category spin requirements. This proposal is unacceptable since the FAA has always maintained that an acrobatic category airplane must comply with acrobatic category spin requirements despite the wording in the current rule. The rule's history, coupled with preamble information for Amendment 23–50, reveals that the rule was changed to add the normal category spin requirements and to accommodate an applicant's desire to comply with the acrobatic spin requirements for at least one configuration, but not necessarily all configurations.

Type Certification Basis

Under the provisions of 14 CFR, part 21, § 21.17, ATG must show that the Model 100 meets the applicable provisions of part 23, as amended by Amendment 23–1 through 23–55 thereto. If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR, part 23) do not contain adequate or appropriate safety standards for the ATG Model 100 series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The ATG Model 100 will incorporate the following novel or unusual design features: High thrust-to-weight ratio, military training jet configuration with a higher fuselage mass compared to typical part 23 acrobatic airplanes.

Applicability

As discussed above, these special conditions are applicable to the ATG Model 100 series. Should ATG apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the ATG Model 100 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the ATG Model 100 airplanes.

Title 14 CFR, part 23, § 23.221(c) as amended by Amendment 23–50 presents acrobatic category airplane spin requirements. As the rule is currently written, the acrobatic category airplane must comply with normal category spin requirements, acrobatic category emergency egress requirements in § 23.807, and acrobatic spin requirements for each configuration requested for spin approval.

ATG proposes to prohibit intentional spins and requests that no configuration be approved for spins. This proposal leads to an acrobatic category airplane that meets only normal category spin requirements. This proposal is unacceptable since the FAA has always maintained that an acrobatic category airplane must comply with acrobatic category spin requirements despite the wording in the current rule. The rule's history coupled with preamble information for Amendment 23–50 reveals that the rule was changed to add the normal category spin requirements and to accommodate an applicant's desire to comply with the acrobatic spin requirements for at least one configuration, but not necessarily all configurations.

Since the wording of the current rule combined with ATG's proposal does not provide the level of safety envisioned for an acrobatic category airplane, the FAA proposes the following special condition under the authority of 14 CFR, part 21, § 21.16 to replace § 23.221(c) in its entirety:

SC 23.221 Spinning

(c) *Acrobatic category airplanes.* An acrobatic category airplane must meet the spin requirements of paragraph (a) of this section and § 23.807(b)(5). In addition, the following requirements must be met in an applicant-designated acrobatic configuration, and in each other configuration for which approval for spinning is requested:

(1) The airplane must recover from any point in a spin up to and including six turns, or any greater number of turns for which certification is requested, in not more than one and one-half additional turns after initiation of the first control action for recovery. However, beyond three turns, the spin may be discontinued if spiral characteristics appear.

(2) The applicable airspeed limits and limit maneuvering load factors must not be exceeded. For flaps extended configurations for which approval is requested, the flaps must not be retracted during the recovery.

(3) It must be impossible to obtain unrecoverable spins with any use of the flight or engine power controls either at the entry into or during the spin.

(4) There must be no characteristics during the spin (such as excessive rates of rotation or extreme oscillatory motion) that might prevent a successful recovery due to disorientation or incapacitation of the pilot.

(5) The airplane is considered to meet the requirements of paragraph (c) of this special condition with a specific demonstration. The applicant must demonstrate that it is extremely remote for the airplane in the applicant-designated acrobatic configuration, and in each other configuration for which approval for spinning is requested, to enter a spin with any use of the flight or engine power controls, either at or after entry into the stall maneuver.

Issued in Kansas City, Missouri on January 24, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1610 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26498; Directorate Identifier 2006–CE–83–AD]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Models 208 and 208B Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2006–06–06, which applies to certain Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. AD 2006–06–06 currently requires you to incorporate information into the applicable section of the Airplane Flight Manual (AFM) and Pilot's Operating Handbook (POH) and requires installation of placards. Since we issued AD 2006–06–06, Cessna issued further revisions to the AFM Supplement S1 ''Known Icing Equipment'' and developed a low airspeed awareness system. Consequently, this proposed AD would require you to incorporate the AFM Supplement revisions, to install the low airspeed awareness system, and to retain the requirements of AD 2006–06–06 until the above requirements are incorporated. We are proposing this AD to assure that the pilot has enough information and the necessary equipment to prevent loss of control of the airplane while in flight during icing conditions.

DATES: We must receive comments on this proposed AD by March 5, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

For service information identified in this proposed AD, contact The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277.

FOR FURTHER INFORMATION CONTACT: Robert P. Busto, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; *telephone:* (316) 946–4157; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket

number, ''FAA–2006–26498; Directorate Identifier 2006–CE–83–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

Several accidents/incidents with Cessna Models 208 and 208B airplanes during operations in icing conditions, including six accidents in the 2003/2004 icing season and nine accidents in the 2004/2005 icing season, caused us to issue AD 2005–07–01, Amendment 39–14025 (70 FR 15223), which required the incorporation of revisions into applicable section of the AFM, and AD 2006–01–11, Amendment 39–14450 (71 FR 16994). AD 2006–01–11 requires the installation of a pilot assist handle, pneumatic deicing boots on the cargo pod and landing gear struts, and changes to the Limitations Section of the AFM if the airplane is to be operated in ground icing conditions and approved for flight into known or forecast icing conditions. AD 2005–07–01 was superseded by AD 2006–06–06, Amendment 39–14514 (71 FR 13533, March 16, 2006). AD 2006–06–06 currently requires the following on certain Cessna Models 208 and 208B airplanes:

- Incorporation of revisions to the FAA-approved AFM and FAA-approved AFM Supplement S1 ''Known Icing Equipment;''
- Incorporation of new text in the Limitations Section of the AFM and AFM Supplement; and
- Incorporation of new text in the Performance Section of the AFM Supplement and the fabrication and installation of placards.

AD 2006–06–06 was intended to be an interim action. Cessna has since published revisions to the AFM Supplement S1 ''Known Icing Equipment,'' which incorporates climb performance data in icing conditions. This data is to be used for preflight planning and as an in-flight limitation. AD 2006–06–06 included a limitation on autopilot use as an interim action until the development of an acceptable low speed awareness system. Cessna has issued service information introducing this system. Cessna has also developed specific training for operation of the Models 208 and 208B airplanes in icing conditions. This training is available on-line at: *http://www.cessnaelearning.com* or as part of the Cessna Winter Awareness Seminars.

If the pilot does not have enough information in the AFM or the necessary equipment to conduct safe flight into icing conditions, then loss of control could occur.

Relevant Service Information

We have reviewed Cessna Caravan Service Bulletin (SB) CAB06–8, dated September 18, 2006; Cessna Caravan SB CAB06–11, dated October 9, 2006; and Cessna Caravan Service Kit (SK) 208–171, dated October 9, 2006.

The service information includes the following:

- *Cessna Caravan SB CAB06–8:* revisions to the Pilot's Operating Handbook (POH) Supplement S1 ''Known Icing Equipment'' and installation instructions for installation of operational placards; and
- *Cessna Caravan SB CAB06–11:* announces the availability of a Service Kit which provides parts and instructions to install a new low airspeed awareness system.
- *Cessna Caravan SK208–171:* instructions for the installation of a new icing low speed awareness system.

In addition, Cessna has developed revisions to the AFM Supplement S1 ''Known Icing Equipment'' as follows:

Document	Affects
Revision 9 of the Model 208 (675 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1352–S1–09, dated August 24, 2006.	Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent or higher horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.
Revision 8 of the Model 208 (600 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1307–S1–08, dated August 24, 2006.	Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.
Revision 9 of the 208B (675 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1329–S1–09, dated August 24, 2006.	Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent or higher horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.
Revision 9 of the 208B (600 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1309–S1–09, dated August 24, 2006.	Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 2006–06–06 with a new AD that would:

- Require the actions in the previously referenced service information; and
- Retain the actions of AD 2006–06–06 until the above requirements are incorporated.

Costs of Compliance

We estimate that this proposed AD would affect 765 airplanes in the U.S. registry.

We estimate the following costs to do the proposed actions:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
22 work-hours × $80 per hour = $1,760	$6,440	$8,200	$6,273,000

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–06–06, Amendment 39–14514, (71 FR 13533, March 16, 2006), and adding the following new AD:

Cessna Aircraft Company: Docket No. FAA–2006–26498; Directorate Identifier 2006–CE–83–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by March 5, 2007.

Affected ADs

(b) This AD supersedes AD 2006–06–06, Amendment 39–14514.

Applicability

(c) This AD applies to Models 208 and 208B, all serial numbers that are certificated in any category.

Unsafe Condition

(d) This AD results from our determination that further revisions to the Airplane Flight Manual (AFM) Supplement S1 ''Known Icing Equipment'' are necessary, and the installation of a low airspeed awareness system is required. We are issuing this AD to assure that the pilot has enough information and the necessary equipment to prevent loss of control of the airplane while in-flight during icing conditions.

New Actions Required by This AD

(e) Within the next 30 days after the effective date of this AD, do the following, unless already done:

(1) For all Model 208 and 208B aircraft not currently restricted from flight into known or forecast icing: Install a low airspeed awareness system following the instructions in Cessna Service Bulletin CAB06–11 and Service Kit SK 208–171, both dated October 9, 2006.

(2) Incorporate the following revisions to the AFM Supplement S1 ''Known Icing Equipment'' as applicable:

Document	Affects
(i) Revision 9 of the Model 208 (675 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1352–S1–09, dated August 24, 2006.	Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent or higher horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.
(ii) Revision 8 of the Model 208 (600 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1307–S1–08, dated August 24, 2006.	Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.
(iii) Revision 9 of the Model 208B (675 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1329–S1–09, dated August 24, 2006.	Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent or higher horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.

Document	Affects
(iv) Revision 9 of the Model 208B (600 SHP) FAA-approved Flight Manual Supplement S1 ''Known Icing Equipment,'' Cessna document D1309–S1–09, dated August 24, 2006.	Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.

(3) For all Model 208 and 208B aircraft equipped with pneumatic deicing boots, and not currently restricted from flight into known or forecast icing: incorporate the following information in the Limitations Section of the Airplane Flight Manual (AFM) Supplement S1 ''Known Icing Equipment'' to require pilot training before further flight into known or forecast icing conditions. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the POH specified in paragraphs (e)(3)(i) and (e)(3)(ii) of this AD. You may insert a copy of this AD into the appropriate sections of the POH to comply with this action. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9):

(i) ''The pilot-in-command must successfully complete specific training for flight into icing conditions provided by Cessna Aircraft Company within the 12 calendar months preceding any flight into known or forecast icing conditions.

Completion of either of the following courses will meet this training requirement:

Caravan Cold Wx Ops Onsite—C14694—(CAC 14694)

Caravan Cold Wx Ops Online—C14695—(CAC 14695)''

(ii) ''Note: The three-hour, on-line training course became available on October 2, 2006, at: *http://www.cessnaelearning.com*. The three-hour on-site training courses are scheduled annually in October at various locations and provided by Cessna Aircraft Company at no cost as part of the Cessna Winter Awareness Seminars. Confirmation of pilot training completion will be maintained by Cessna Aircraft Company. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.''

(f) The actions in paragraphs (g) and (h) below are retained in this AD from AD 2006–06–06. The new actions required by this AD in paragraph (e) above terminates the requirement for the actions in paragraphs (g) and (h).

(g) No later than March 27, 2006 (3 days after March 24, 2006, which is the effective date of AD 2006–06–06), incorporate the following revisions into the Airplane Flight Manual (AFM), unless already accomplished:

Affected airplanes	Incorporate the following AFM revision document
(1) Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers.	Section 2: Limitations and Section 4: Normal Procedures: Temporary Revision 208PHTR05, dated June 27, 2005, to the POH and FAA-approved AFM.
(2) Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.	Section 9: Optional Systems Description and Operating Procedures: Revision 6 of the 208 (675 SHP) POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment,'' Cessna document D1352–S1–06, dated June 27, 2005.
(3) Cessna Model 208 airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.	Section 9: Optional Systems Description and Operating Procedures: Revision 6 of the Cessna Model 208 (600 SHP) POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment,'' Cessna document D1307–S1–06, dated June 27, 2005.
(4) Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114A turboprop engine installed (675 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.	Section 9: Optional Systems Description and Operating Procedures: Revision 7 of the 208B (675 SHP) POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment,'' Cessna document D1329–S1–07, dated June 27, 2005.
(5) Cessna Model 208B airplanes with a Pratt & Whitney of Canada Ltd., PT6A–114 turboprop engine installed (600 SHP) or FAA-approved engine of equivalent horsepower installed, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing.	Section 9: Optional Systems Description and Operating Procedures: Revision 6 of the 208B (600 SHP) POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment,'' Cessna document D1309–S1–06, dated June 27, 2005.

(h) You must do the following actions, unless already done. These changes are to the POH and FAA-approved AFM and to the POH/FAA-approved AFM Supplement S1 ''Known Icing Equipment'' mandated in paragraph (g) of this AD:

Actions	Compliance	Procedures
(1) For Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing: You are prohibited from continued flight after encountering moderate or greater icing conditions. The airplane can dispatch into forecast areas of icing but must exit moderate or greater icing conditions if encountered.	No later than March 27, 2006 (3 days after March 24, 2006, which is the effective date of AD 2006–06–06).	Not Applicable.

Actions	Compliance	Procedures
(2) For Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing: (i) Insert the text in Appendix 1 of this AD preceding the KINDS OF OPERATION LIMITS paragraph in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM. (ii) Insert the text in Appendix 2 of this AD in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 at the beginning of the paragraph ''REQUIRED EQUIPMENT.''	No later than March 27, 2006 (3 days after March 24, 2006, which is the effective date of AD 2006–06–06).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the POH/AFM as specified in paragraph (h)(2) of this AD. You may insert a copy of this AD into the appropriate sections of the POH/AFM to comply with this action. Make an entry into the aircraft records showing compliance with portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(3) For Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing: Install 3 placards with black letters on a white background. The placards shall be located on the instrument panel in one of the following areas: under the radio stack, immediately above the pilot's flight instruments, or below the pilot's vertical speed indicator. Lettering on the placard shall be a minimum height of ⅛-inch. (i) Placard 1 shall include the text of Appendix 3 of this AD. (ii) Placard 2 shall include the following text: ''120 KIAS Minimum in Icing Flaps Up except 110 KIAS if Climbing to Exit Icing.'' (iii) Placard 3 shall include the following text: ''Disconnect autopilot at first indication of ice accretion.''	No later than March 27, 2006 (3 days after March 24, 2006, which is the effective date of AD 2006–06–06).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may install the placards as specified in paragraph (h)(3) of this AD. Make an entry into the aircraft records showing compliance with portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(4) For Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing: (i) Insert the text in Appendix 4 of this AD under the ''AIRSPEED LIMITATIONS'' paragraph in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM. (ii) Replace the text in the KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''MINIMUM SPEED IN ICING CONDITIONS'' paragraph with the text in Appendix 4. (iii) Insert the following text in the LIMITATIONS section of the POH/AFM under the ''OTHER LIMITATIONS'' paragraph and in the LIMITATIONS section of the KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''AUTOPILOT OPERATION IN ICING CONDITIONS'' paragraph: ''Disconnect autopilot at first indication of ice accretion.''	No later than March 27, 2006 (3 days after March 24, 2006, which is the effective date of AD 2006–06–06).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the POH/AFM as specified in paragraph (h)(4) of this AD. You may insert a copy of this AD into the appropriate sections of the POH/AFM to comply with this action. Make an entry into the aircraft records showing compliance with portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Actions	Compliance	Procedures
(5) For Cessna Model 208 airplanes and Model 208B airplanes, all serial numbers, equipped with airframe deicing pneumatic boots, that are not currently prohibited from flight in known or forecast icing: (i) Replace the text in the PERFORMANCE section of the Cessna Models 208 or 208B POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''STALL SPEEDS'' paragraph with the text in Appendix 5. (ii) Replace the ''WARNING'' text in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 under ''ENVIRONMENTAL CONDITIONS'' with: ''FLIGHT IN THESE CONDITIONS ARE PROHIBITED.'' (iii) Replace the last two sentences in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 under ''ENVIRONMENTAL CONDITIONS'' with the following text: ''Exit strategies should be determined during pre-flight planning.''.	No later than March 27, 2006 (3 days after March 24, 2006, which is the effective date of AD 2006–06–06).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may insert the information into the POH/AFM as specified in paragraph (h)(5) of this AD. You may insert a copy of this AD into the appropriate sections of the POH/AFM to comply with this action. Make an entry into the aircraft records showing compliance with portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Alternative Methods of Compliance (AMOCs)

(i) The Manager Wichita Aircraft Certification Office (ACO), FAA, ATTN: Robert P. Busto, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; *telephone:* (316) 946–4157; *fax:* (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) To get copies of the service information referenced in this AD, contact: The Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2006–26498; Directorate Identifier 2006–CE–83–AD.

Appendix 1 Retained From AD 2006–06–06

Changes to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-Approved Airplane Flight Manual (AFM)

Affected Cessna Models 208 or 208B POH and FAA-Approved AFM

Insert the following text at the beginning of the KINDS OF OPERATION LIMITS paragraph in the LIMITATIONS section of the Cessna Models 208 or 208B POH and FAA-approved AFM. This may be done by inserting a copy of this AD into the POH/AFM:

''Continued flight after encountering moderate or greater icing conditions is prohibited. One or more of the following defines moderate icing conditions for this airplane:

Indicated airspeed in level cruise flight at constant power decreases by 20 knots. Engine torque required to maintain airspeed increases by 400 ft. lbs. Airspeed of 120 KIAS cannot be maintained in level flight. An accretion of ¼-inch of ice is observed on the wing strut.

Disregard any mention of approval for flight in icing conditions within the POH/AFM.''

Appendix 2 Retained From AD 2006–06–06

Changes to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-Approved Airplane Flight Manual (AFM)

Affected Cessna Models 208 or 208B POH and FAA-Approved AFM

Insert the following text in the LIMITATIONS section of the POH and FAA-approved AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1, at the beginning of the paragraph ''REQUIRED EQUIPMENT.'' This may be done by inserting a copy of this AD into the POH/AFM:

''Continued flight after encountering moderate or greater icing conditions is prohibited. One or more of the following defines moderate icing conditions for this airplane:

Indicated airspeed in level flight at constant power decreases by 20 knots. Engine torque required to maintain airspeed increases by 400 ft. lbs. Airspeed of 120 KIAS cannot be maintained in level flight. An accretion of ¼-inch of ice is observed on the wing strut.

Disregard any mention of approval for flight in icing conditions within the POH/AFM.''

Appendix 3 Retained From AD 2006–06–06

Cessna Model 208 Airplanes and Model 208B Airplanes, Equipped With Airframe Deicing Pneumatic Boots, That Are Not Currently Prohibited From Flight in Known or Forecast Icing

Install a placard with black letters on a white background. The placard shall be located on the instrument panel in one of the following areas: Under the radio stack, immediately above the pilot's flight instruments, or below the pilot's vertical speed indicator. Lettering on the placard shall be a minimum ⅛-inch tall and state the following:

''Continued flight after encountering moderate or greater icing conditions is prohibited. One or more of the following defines moderate icing conditions for this airplane:

Airspeed in level flight at constant power decreases by 20 KIAS. Engine torque required to maintain airspeed increases by 400 ft. lbs. 120 KIAS cannot be maintained in level flight.

Ice accretion of ¼ inch observed on the wing strut.''

Appendix 4 Retained From AD 2006–06–06

Changes to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-Approved Airplane Flight Manual (AFM) Supplement S1

Affected Cessna Models 208 or 208B POH and FAA-Approved AFM and FAA-Approved Supplement S1

Insert the following text into the LIMITATIONS section under the ''AIRSPEED LIMITATIONS'' paragraph of the Cessna

Models 208 or 208B POH and FAA-approved AFM, and replace the text in the KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''MINIMUM SPEED IN ICING CONDITIONS'' paragraph with the following text. This may be done by inserting a copy of this AD into the POH/AFM:

''Minimum airspeed in icing conditions, for all flight phases including approach, except takeoff and landing:

Flaps up: 120 KIAS
Flaps 10°: 105 KIAS
Flaps 20°: 95 KIAS

Exception for flaps up: when climbing to exit icing conditions airspeed can be reduced to 110 KIAS minimum.

Flaps must be extended during all phases (takeoff and landing included) at airspeeds below 110 KIAS, except adhere to published AFM procedures when operating with ground deicing/anti-icing fluid applied.

WARNING

The aural stall warning system does not function properly in all icing conditions and should not be relied upon to provide adequate stall warning when in icing conditions.''

Note: These are minimum speeds for operations in icing conditions. Disregard any reference to the original speeds within the POH/AFM.

Appendix 5 Retained From AD 2006–06–06

Changes to the Cessna Models 208 or 208B Pilot's Operating Handbook (POH) and FAA-Approved Airplane Flight Manual (AFM) Supplement S1

Replace the text in the PERFORMANCE section of the POH/AFM KNOWN ICING EQUIPMENT SUPPLEMENT S1 under the ''STALL SPEEDS'' paragraph with the following text:

''Ice accumulation on the airframe may result in a 20 KIAS increase in stall speed. Either buffet or aural stall warning should be treated as an imminent stall.''

''WARNING—The aural stall warning system does not function properly in all icing conditions and should not be relied upon to provide adequate stall warning when in icing conditions.''

Issued in Kansas City, Missouri, on January 25, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–1604 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–07–001]

RIN 1625–AA08

Special Local Regulations for Marine Events; Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the special local regulations at 33 CFR 100.518. This rulemaking is intended to accommodate changes in event dates for recurring marine events specified in this regulation. The marine events included in this proposed rule include the Safety at Sea Seminar, U.S. Naval Academy Crew Races and the Blue Angels Air Show. This proposed rule is intended to restrict vessel traffic in portions of the Severn River during the period of these marine events and is necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before March 5, 2007.

ADDRESSES: You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 391–8149. The Inspection and Compliance Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis M. Sens, Project Manager, Inspections and Compliance Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–07–001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

We propose to amend 33 CFR 100.518 to accommodate changes to the enforcement period for U.S. Naval Academy sponsored marine events. Each year the U.S. Naval Academy hosts various marine events on the Severn River adjacent to the academy. Organized collegiate crew races are typically held annually during weekends in March, April and May. The Blue Angels air show is normally scheduled during graduation week at the U.S. Naval Academy. Maritime traffic is prohibited from using the regulated area of the Severn River during air show performances in accordance with Federal Aviation Administration requirements. The proposed dates for marine events for 2007 will be; Safety at Sea Seminar on March 24, 2007; U.S. Naval Academy crew races on May 6 and May 27, 2007; and the Blue Angels air show on May 23 and May 24, 2007. The events will be enforced from 5 a.m. to 6 p.m. on those days and if the event's daily activities should conclude prior to 6 p.m., enforcement of this proposed regulation may be terminated for that day at the discretion of the Patrol Commander. The U.S. Naval Academy is the sponsor for all of these events and intends to hold them annually on the dates provided in 33 CFR 100.518.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations at 33 CFR 100.518 to accommodate the dates of annual recurring U.S. Naval Academy marine events. The changes are necessary to reflect new enforcement dates. These proposed changes are needed to control

vessel traffic during the events to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The effect of this proposed action merely establishes the dates on which the existing regulations would be enforced. It would not impose any additional restrictions on vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Severn River during the event.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would merely establish the dates on which the existing regulations would be enforced. It would not impose any additional restrictions on vessel traffic.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine event permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Revise paragraphs (c)(1) introductory text, (c)(1)(i), (c)(1)(ii), (c)(1)(iii) and (c)(2) and add (c)(3) of § 100.518 to read as follows:

§ 100.518 Severn River, College Creek, Weems Creek and Carr Creek, Annapolis, Maryland.

* * * * *

(c) *Enforcement period.* (1) This section will be enforced from 5 a.m. to 6 p.m. on days when the following events are held:

(i) Safety at Sea Seminar, held on the fourth Saturday in March;

(ii) Naval Academy Crew Races held on the last weekend in March and every weekend in April and May;

(iii) Blue Angels Air Show, held on the fourth Tuesday and Wednesday in May.

(2) Should the event's daily activities conclude prior to 6 p.m., enforcement of this section may be terminated for that day at the discretion of the Coast Guard Patrol Commander.

(3) The Commander, Fifth Coast Guard District will publish a notice in the Fifth Coast Guard District Local Notice to Mariners announcing the specific event dates and times. Notice will also be made via marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

Dated: January 10, 2007.

Larry L. Hereth,

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

[FR Doc. E7–1613 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2006–0928; FRL–8275–1]

Approval and Promulgation of Air Quality Implementation Plan; South Dakota; Revisions to New Source Review Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to partially approve and partially disapprove revisions adopted by South Dakota on August 29, 2006 to Chapter 74:36:09 of the South Dakota Administrative Rules (Prevention of Significant Deterioration of Air Quality). South Dakota submitted the request for approval of these rule revisions into the State Implementation Plan (SIP) on September 1, 2006. South Dakota was granted delegation of authority by EPA on July 6, 1994 to implement and enforce the federal Prevention of Significant Deterioration (PSD) permitting regulations. EPA's delegation of authority to South Dakota for the PSD regulations would be rescinded if EPA issues final approval of this SIP revision, except for the one rule provision that EPA is proposing to disapprove. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before March 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2006–0928, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: daly.carl@epa.gov* and *ostrand.laurie@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2006–0928. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov*

index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Air and Radiation Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6416, *daly.carl@epa.gov*.

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or *South Dakota* mean the State of South Dakota, unless the context indicates otherwise.

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I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.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:

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

b. 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.

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

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

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

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

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

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

II. What Is Being Addressed in This Document?

EPA is proposing to approve revisions to Chapter 74:36:09 (Prevention of Significant Deterioration of Air Quality) of the Administrative Rules of South Dakota. These revisions were submitted to EPA by the South Dakota Department of Environment and Natural Resources (DENR) on September 1, 2006, and relate to the Prevention of Significant Deterioration (PSD) permit program of the State of South Dakota. These revisions to Chapter 74:36:09 were adopted by the South Dakota Board Interim Rules Committee on August 29, 2006. South Dakota was granted delegation of authority by EPA on July 6, 1994 to implement and enforce the federal PSD permitting regulations. EPA provided notice of this delegation in the **Federal Register** on September 15, 1994 (59 FR 47260).

On December 31, 2002, EPA published revisions to the federal PSD and non-attainment NSR regulations in 40 CFR parts 51 and 52 (67 FR 80186). These revisions are commonly referred to as the ''NSR Reform'' regulations and became effective nationally in areas not covered by a SIP on March 3, 2003. Since South Dakota is delegated for PSD and not covered by a SIP, the NSR Reform regulations became effective in South Dakota at that time. These regulatory revisions include provisions for baseline emissions determinations, actual-to-future-actual methodology, plantwide applicability limits (PALs), clean units, and pollution control projects (PCPs). As stated in the December 31, 2002 rulemaking, State and local permitting agencies must adopt and submit revisions to their part 51 permitting programs implementing the minimum program elements of that rulemaking no later than January 2, 2006 (67 FR 80240). As noted above, South Dakota is currently delegated for the PSD program and is not subject to this requirement, but the State requests in their submittal to have the PSD program incorporated into South Dakota's SIP.

On November 7, 2003, EPA published a reconsideration of the NSR Reform regulations that clarified two provisions in the regulations by including a definition of ''replacement unit'' and by clarifying that the plantwide applicability limitation (PAL) baseline calculation procedures for newly constructed units do not apply to modified units.

On June 24, 2005, the United States Court of Appeals for the District of Columbia Circuit issued its ruling on challenges to the December 2002 NSR Reform revisions (*State of New York et al.* v. *EPA*, 413 F.3d 3 (D.C. Cir. 2005)). Although the Court upheld most of EPA's rules, it vacated both the Clean Unit and the Pollution Control Project provisions and remanded back to EPA the recordkeeping provision at 40 CFR 52.21(r)(6) that required a stationary source to keep records of projects when there was a ''reasonable possibility'' that the project could result in a significant emissions increase.

On October 27, 2003 EPA published the Routine Equipment Replacement Provision (68 FR 61248), which specified at 40 CFR 52.21(cc) the criteria for routine equipment. On March 17, 2006, the Court of Appeals for the D.C. Circuit vacated EPA's final Routine Equipment Replacement Provision (ERP).

In its revision to Chapter 74:36:09 of the South Dakota Administrative Rules, South Dakota did not incorporate the vacated Clean Unit, PCP, and ERP provisions.

III. What Are the Changes That EPA Is Approving?

EPA is proposing to approve a revision to South Dakota's SIP that would incorporate by reference the federal PSD requirements, found at 40 CFR 52.21, into the State's PSD program. The revision to the South Dakota Administrative Rules Chapter 74:36:09 incorporates by reference the provisions of 40 CFR 52.21, as they exist on July 1, 2005, with the exceptions noted below.

South Dakota did not incorporate by reference those sections of the federal rules that do not apply to State activities or are reserved for the Administrator of the EPA. These sections are 40 CFR 52.21(a)(1) (plan disapproval), 52.21(q) (public participation), 52.21(s) (environmental impact statements), 52.21(t) (disputed permit or redesignations), and 52.21(u) (delegation of authority).

South Dakota did not incorporate by reference the vacated federal requirements for Equipment Replacement, Clean Unit, and Pollution Control Project. Therefore, the following federal provisions found in 40 CFR 52.21 are not incorporated by reference in Chapter 74:36:09: 40 CFR 52.21(x), 52.21(y), 52.21(z), 52.21(cc), 52.21(a)(2)(iv)(e), the second sentence of 52.21(a)(2)(iv)(f), 52.21(a)(2)(vi), 52.21(b)(2)(iii)(h), 52.21(b)(3)(iii)(b), 52.21(b)(3)(vi)(d), 52.21(b)(32), 52.21(b)(42), (b)(55), (b)(56), (b)(57), (b)(58), and the phrase ''other than projects at a Clean Unit or at a source with a PAL'' in 40 CFR 52.21(r)(6).

The phrase ''reasonable possibility'' used in the federal rule at 40 CFR 52.21(r)(6) limits the recordkeeping provisions to modifications at facilities that use the actual-to-future-actual methodology to calculate emissions changes and that may have a ''reasonable possibility'' of a significant emissions increase. The South Dakota rule does incorporate by reference the phrase ''reasonable possibility'' as it is used at 40 CFR 52.21(r)(6). EPA has not yet responded to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules. As a result, EPA's final decision with regard to the remand may require EPA to take further action on this portion of South Dakota's rule. At this time, however, South Dakota's recordkeeping provisions are as stringent as the federal requirements, and are therefore approvable.

The South Dakota incorporation by reference describes the circumstances in which the term ''Administrator'' continues to mean the EPA Administrator and when it means the Secretary of DENR instead. South Dakota rule 74:36:09:02(1) identifies the following provisions in Chapter 74:36:09 where the term ''Administrator'' continues to mean the Administrator of EPA: 40 CFR 52.21(b)(17), 52.21(b)(37)(i), 52.21(b)(43), 52.21(b)(48)(ii)(c), 52.21(b)(50)(i), 52.21(g)(1) to 52.21(g)(6), and 52.21(l)(2). This list does not include 40 CFR 52.21(p)(2). Therefore, under South Dakota's PSD rule, the term ''Administrator'' in 40 CFR 52.21(p)(2) refers to the Secretary of the DENR.

This is inconsistent with EPA's determination that 40 CFR 52.21(p)(2) must still refer to the Administrator of EPA. EPA bases this determination on a review of its PSD regulations at 40 CFR 51.166. While the PSD regulations at 40 CFR 52.21 apply to EPA's direct implementation of the PSD program in States that do not have an approved PSD SIP, the PSD regulations at 40 CFR 51.166 identify the elements States must include in their SIPs to gain EPA approval. The regulations at 40 CFR 51.166 generally mirror the regulations at 40 CFR 52.21, except that the term ''Administrator'' in 40 CFR 52.21 is often replaced by the term ''reviewing authority'' in 40 CFR 51.166. However, 40 CFR 51.166(p)(2), which corresponds to 40 CFR 52.21(p)(2), retains the term ''Administrator,'' indicating that in SIPs the required consultation must continue to occur with the EPA Administrator, not the Administrator of the State program. In contrast, other provisions in 40 CFR 51.166(p) use the term ''reviewing authority'' in place of Administrator (e.g., 40 CFR 51.166(p)(1) and (p)(3)).

In addition, EPA's determination is consistent with recently EPA approved SIP revisions where the State has incorporated by reference 40 CFR 52.21. Mississippi's PSD regulations identify that ''Administrator as it appears in 40 CFR 52.21 shall mean the Mississippi Environmental Quality Permit Board, except that: * * * In the following subsections, it shall continue to mean the Administrator of the USEPA: * * * i. (p)(2) (concerning Federal Land Manager).'' (See 71 FR 38773, July 10, 2006). Missouri's PSD regulations identify that ''Administrator as it appears in 40 CFR 52.21 shall refer to the director of the Missouri Department of Natural Resources' Air Pollution Control Program except in the following, where it shall continue to refer to the administrator of the U.S. Environmental Protection Agency: * * * 9. (p)(2) Federal Land Manager.'' (See 71 FR 36486, (June 27, 2006)).

Therefore, we are proposing disapproval of 74:36:09:02's incorporation of 40 CFR 52.21(p)(2), and we are proposing to disapprove 74:36:09:02(1) to the extent it defines ''Administrator,'' as used in 40 CFR 52.21(p)(2), to mean the Secretary of DENR. In all other respects, we are approving 74:36:09:02 and 74:36:09:02(1). Thus, until South Dakota revises its PSD rule to address our concern and gains EPA approval of the revision, 40 CFR 52.21(p)(2) will continue to apply as federal law in lieu of the State-adopted version of 40 CFR 52.21(p)(2). This means that the consultation required by 40 CFR 52.21(p)(2) needs to occur with the EPA Administrator, not the Secretary of DENR.[1]

If South Dakota submits a SIP revision that revises their PSD rule to clarify that the term ''Administrator,'' as used in 40 CFR 52.21(p)(2), means the EPA Administrator prior to final EPA action on this SIP rulemaking, EPA will approve the incorporation by reference of 40 CFR 52.21(p)(2).

As noted above, South Dakota did not incorporate by reference 40 CFR 52.21(q) (public participation). South Dakota has instead incorporated by reference 40 CFR 51.166(q) (public participation) at 74:36:09:03. The regulations at 40 CFR 51.166 are what a SIP must contain for EPA to approve a PSD permit program, and generally mirror the federal PSD regulations at 40 CFR 52.21. In addition, South Dakota added in 74:36:09:03 six additional provisions that revise 40 CFR 51.166(q) in order to make the PSD permit public participation requirements specific to South Dakota.

The requirements included in South Dakota's PSD program, as specified in Chapter 74:36:09, are substantively the same as the federal PSD provisions due to South Dakota's incorporation of the federal rules by reference. The revisions South Dakota made to 40 CFR 52.21 noted above were reviewed by EPA and found to be as stringent as the federal rules, except for provision 74:36:09:02(1), noted above. EPA has, therefore, determined that, except for 74:36:09:02(1), the proposed revisions are consistent with the program requirements for the preparation, adoption, and submittal of

[1] 40 CFR 52.21(p)(2): ''Federal Land Manager. The Federal Land Manager and the Federal official charged with direct responsibility for management of Class I lands have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands and to consider, in consultation with the *Administrator*, whether a proposed source or modification would have an adverse impact on such values.''

implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth at 40 CFR 51.166, and are approvable as part of the South Dakota SIP.

IV. What Action Is EPA Taking?

We propose to partially approve revisions to Administrative Rules of South Dakota, Chapter 74:36:09 Prevention of Significant Deterioration into the South Dakota SIP. EPA is proposing to disapprove 74:36:09:02's incorporation of 40 CFR 52.21(p)(2), and we are proposing disapproval of 74:36:09:02(1) to the extent that it defines ''Administrator,'' as used in 40 CFR 52.21(p)(2), to mean the Secretary of DENR. In all other respects, we are approving 74:36:09:02 and 74:36:09:02(1).

V. Statutory and Executive Order Reviews

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: January 23, 2007.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

[FR Doc. E7–1621 Filed 1–31–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[EPA–R08–OAR–2005–UT–0007; FRL–8275–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Administrative Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Governor of Utah on August 15, 2001. This SIP submittal deletes Utah's rules R307–102–3, ''Administrative Procedures and Hearings,'' and R307–414–3, ''Request for Review.'' EPA is proposing to remove Utah's rules R307–102–3 and R307–414–3 from Utah's federally approved SIP, because these rules are not required to be in Utah's SIP. This action is being taken under section 110 of the Clean Air Act.

Furthermore, on August 25, 2006, the Governor of Utah submitted revisions to the New Source Performance Standards (NSPS) rules in Utah's Air Conservation Regulations. We are proposing to approve updates to the NSPS ''Delegation Status of New Source Performance Standards'' table to indicate the State has been delegated the authority to implement and enforce NSPS and to add entries for newly delegated NSPS.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received on or before March 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R08–OAR–2005–UT–0007, by one of the following methods:

- *www.regulations.gov* Follow the on-line instructions for submitting comments.
- E-mail: *ostrand.laurie@epa.gov* and *fiedler.kerri@epa.gov*.
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- Hand Delivery: Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Kerri Fiedler, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, phone (303) 312–6493, and e-mail at: *fiedler.kerri@epa.gov*.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: January 22, 2007.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. E7–1620 Filed 1–31–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 5, and 13

[FAR Case 2006–015; Docket 2006–0020; Sequence 15]

RIN: 9000–AK68

Federal Acquisition Regulation; FAR Case 2006–015, Federal Computer Network (FACNET) Architecture

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to delete references to FACNET.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before April 2, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–015 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''Federal Acquisition Regulation'' as the agency of choice. At the ''Keyword'' prompt, type in the FAR case number (for example, FAR Case 2006–015) and click on the ''Submit'' button. Please include any personal and/or business information inside the document. You may also search for any document by clicking on the ''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''Federal Acquisition Regulation'', and typing the FAR case number in the keyword field. Select the ''Submit'' button.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006–015 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2006–015.

SUPPLEMENTARY INFORMATION:

A. Background

In 1994, Congress enacted Pub. L. 103–355, the Federal Acquisition Streamlining Act of 1994 (FASA), which in Title IX called for the development of a Federal Acquisition Computer Network (FACNET) for automating the procurement process. FACNET was to be the preferred means for conducting Government purchases above the micro-purchase limit and below the simplified acquisition threshold. The law set a goal: the Government was to utilize FACNET to purchase more than 75 percent of its goods and services within these dollar limits by 2000.

However, in its 1997 report, *Acquisition Reform: Obstacles to Implementing FACNET*, GAO reviewed comments from agency electronic commerce managers about FACNET's effectiveness, its ability to handle simple procurement transactions and its management and technical obstacles. As a result, GAO urged the Office of Management and Budget, General Services Administration, DOD and other leading Federal procurement shops to devise a new integrated electronic commerce strategy based on clearer functional requirements.

In 1997, Congress enacted Pub. L. 105–85, the National Defense Authorization Act for Fiscal Year 1998, which removed the statutory goal and freed agencies to use other electronic contracting means, such as FedBizOpps. Because of implementing obstacles, the statutory changes addressed above, and an electronic business environment that has evolved since FACNET's introduction, the FAR is being revised to remove FACNET references and provide the opportunity to recognize the evolution of alternative technologies, processes, etc. that Federal agencies are using and will use to satisfy their acquisition needs without removing the use of FACNET for Federal agencies that may use the system.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses the deletion of a term used to describe a system for the electronic data interchange of acquisition information between the private section and the Federal Government without removing the use of the system. Additionally, where necessary in the FAR, the term has been replaced with a more appropriate term that incorporates various electronic data interchange systems. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 4, 5, and 13 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2006–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 5, and 13

Government procurement.

Dated: January 24, 2007.

Ralph De Stefano

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 4, 5, and 13 as set forth below:

1. The authority citation for 48 CFR parts 2, 4, 5, and 13 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

2. Amend section 2.101 by removing from paragraph (b) the definition ''Federal Acquisition Computer Network (FACNET) Architecture''.

PART 4—ADMINISTRATIVE MATTERS

4.502 [Amended]

3. Amend section 4.502 by removing from paragraph (b)(2) '', (*e.g.*, the Federal Acquisition Computer Network (FACNET))''.

PART 5—PUBLICIZING CONTRACT ACTIONS

5.101 [Amended]

4. Amend section 5.101 by removing from paragraph (a)(2)(ii) ''or Federal Acquisition Computer Network (FACNET)''.

5.102 [Amended]

5. Amend section 5.102 by removing from paragraph (a)(3) ''to FACNET'' and adding ''using electronic commerce'' in its place.

5.201 [Amended]

6. Amend section 5.201 by removing from paragraph (b)(2) ''to FACNET'' and adding ''using electronic commerce'' in its place.

5.203 [Amended]

7. Amend section 5.203 by removing from paragraph (b) ''via FACNET or for which'' and adding ''where'' in its place.

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.104 [Amended]

8. Amend section 13.104 by removing from paragraph (b) ''using either FACNET or''.

9. Amend section 13.105 by revising paragraph (a) to read as follows:

13.105 Synopsis and posting requirements.

(a) The contracting officer must comply with the public display and synopsis requirements of 5.101 and 5.203 unless an exception in 5.202 applies.

* * * * *

10. Amend section 13.106–1 by revising paragraph (f) to read as follows:

13.106–1 Soliciting competition.

* * * * *

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including electronic commerce) if doing so would not interfere with the efficient conduct of the acquisition.

13.106–2 [Amended]

11. Amend section 13.106–2 by removing from paragraph (b)(4) ''FACNET or''.

13.106–3 [Amended]

12. Amend section 13.106–3 by removing from paragraph (c) ''FACNET or''.

13.307 [Amended]

13. Amend section 13.307 by removing from paragraph (b)(1) ''via FACNET, electronically,'' and adding ''electronically'' in its place.

[FR Doc. 07–439 Filed 1–31–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1243

[STB Ex Parte No. 661 (Sub-No. 1)]

Rail Fuel Surcharges

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In conjunction with the Surface Transportation Board's decision in Rail Fuel Surcharges, STB Ex Parte No. 661 (STB served Jan. 26, 2007), the Board has proposed to require all large (Class I) railroads to submit a monthly report containing the following information: total monthly fuel cost; gallons of fuel consumed during the month; increased or decreased cost of fuel over the previous month; and total monthly revenue from fuel surcharges.

DATES: Comments are due by April 2, 2007.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 661 (Sub-No. 1), 1925 K Street, NW., Washington, DC 20423–0001.

Copies of written comments received by the Board will be available from the Board's contractor, ASAP Document Solutions (mailing address: Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: *asapdc@verizon.net*; telephone number: 202–306–4004). The comments will also be available for viewing and self-copying in the Board's Public Docket Room, Room 755, and will be posted to the Board's Web site at *http://www.stb.dot.gov.*

FOR FURTHER INFORMATION, CONTACT: Joseph H. Dettmar at 202–565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10702, the Board has the authority to address the reasonableness of a rail carrier's practices. And the Board has specific authority under 49 U.S.C. 11145(a)(1) to require regulated rail carriers to file annual, periodic, and special reports with the Board. The proposed monthly Report of Fuel Cost, Consumption, and Surcharge Revenues is intended to permit the Board to monitor the current fuel surcharge practices of the large (Class I) carriers. The proposed reporting form is included as Appendix A. See the Board's decision in this proceeding served January 26, 2007, for a discussion of the background and history of rail fuel surcharge reporting.

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA) and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board now seeks comments regarding: (1) Whether the particular collection of information described below is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Information pertinent to these issues is included in Appendix B. This proposed rule has been submitted to OMB for review as required under the PRA, 5 U.S.C. 3507(d) and 5 CFR 1320.11. In accordance with the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Pursuant to 5 U.S.C. 605(b), the Board certifies that this action will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1243

Quarterly Operating Reports—Railroads.

Authority: 49 U.S.C. 11144, 49 U.S.C. 11145.

Decided: January 25, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1243 of title 49, chapter C, of the Code of Federal Regulations as follows:

PART 1243—QUARTERLY AND MONTHLY OPERATING REPORTS—RAILROADS

1. Revise the heading of part 1243 to read as set forth above.

2. The authority citation for part 1243 continues to read as follows:

Authority: 49 U.S.C. 11144, 49 U.S.C. 11145.

3. Add a new § 1243.3 to read as follows:

§ 1243.3 Report of fuel cost, consumption, and surcharge revenue.

Commencing with reports regarding the month of [first month beginning 90 days after publication of final rule] 2007, and monthly thereafter, all Class I line-haul railroad companies are required to file a Report of Fuel Cost, Consumption, and Surcharge Revenue, in accordance with the Board's reporting form. Such monthly reports shall be filed, in duplicate, in the Office of Economics, Environmental Analysis, and Administration, Surface Transportation Board, Washington, DC 20423–0001, within 20 days after the end of the month reported.

Editorial Note: The following appendices will not appear in the Code of Federal Regulations.

BILLING CODE 4915–01–P

APPENDIX A

OMB Control No. 2140-XXXX
Expires _____, 2010

RAILROAD NAME _____

MONTHLY REPORT OF

FUEL COST, CONSUMPTION, AND SURCHARGE REVENUE

FOR THE MONTH OF _____, 20__

Instructions: The report shall contain data only for the reported month. Cost and revenue are defined as accrued or earned that month. The report shall be filed with the Surface Transportation Board on or before 20 days after the end of that month.

LINE NO	Data (a)	Amount (in thousands) (b)
1	Total fuel cost[1]	
2	Gallons of fuel consumed[1]	
3	Increase or decrease in cost of fuel[2]	
4	Revenue from fuel surcharges[3]	

I, the undersigned, _____, Title: _____, state that this report was prepared by me or under my supervision and that I have carefully examined it and on the basis of my knowledge, belief, and verification declare it to be full, true and correct.

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[1] Include fuel for freight, yard and work train locomotives. Include fuel charged to train and yard service (function 67-Locomotive Fuels). Include all other fuel used for railroad operations and maintenance, including motor vehicles and power equipment not charged to function 67- Locomotive Fuels.

[2] Show the total increase or decrease in fuel cost over previous month.

[3] Show the total revenue collected from fuel surcharges.

BILLING CODE 4915–01–C

Appendix B

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

Description of Collection

Title: Report of Fuel Cost, Consumption, and Surcharge Revenue.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: New collection.

Respondents: Class I railroads (railroads with operating revenues exceeding $250 million in 1991 dollars).

Number of Respondents: 7.

Estimated Time per Response: 1 hour (after one-time start-up expenditure of 8 hours).

Frequency: Monthly.

Total Burden Hours (annually including all respondents): 84 hours.

Total ''Non-hour Burden'' Cost: None identified.

Needs and Uses: Under 49 U.S.C. 10702, the Surface Transportation Board has the authority to address the reasonableness of a rail carrier's practices. The proposed information collection is intended to permit the Board to monitor the current fuel surcharge practices of the Class I carriers. Failure to collect this information would impede the Board's ability to fulfill its responsibilities under 49 U.S.C. 10702. The Board has authority to collect information about rail costs and revenues under 49 U.S.C. 11144 and 11145.

Retention Period: Information in this report will be maintained on the Board's Web site for a minimum of one year and will be otherwise maintained by the Board for a minimum of two years.

[FR Doc. E7–1640 Filed 1–31–07; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register

Vol. 72, No. 21

Thursday, February 1, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 29, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Animal and Plant Health Inspection Service

Title: Spring Viremia of Carp-Susceptible Finfish and their Gametes, and Diagnostic Specimens Importation Permits.

OMB Control Number: 0579–0301.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is responsible for the development and administration of regulations intended to protect the health of U.S. farmed fish populations. APHIS is adding import restrictions for certain species of finfish that are susceptible to spring viremia of carp disease (SVC). SVC is a disease of certain species of finfish, caused by an eponymous rhabdovirus. SVC is considered extremely contagious, and there are currently no U.S. approved vaccines or treatments for the virus.

Need and Use of the Information: APHIS has developed import requirements for SVC-susceptible fish species. This necessitates the use of several information collection activities, including application by U.S. importers for an import permit for SVC-susceptible fish species, or for diagnostic samples containing viable SVC virus. APHIS will also require that importers obtain a health certificate from the exporting facility indicating that the exporting country, zone, or aquaculture establishment is in compliance with OIE guidelines to demonstrate freedom from SVC. Without the information, APHIS would be unable to effectively protect farmed fish populations that are known to be susceptible to SVC from imports of finfish or their gametes infected with SVC virus.

Description of Respondents: Farms; Individual or households.

Number of Respondents: 12,010.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 5,969.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E7–1630 Filed 1–31–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0007]

National Animal Identification System; User Guide and Technical Documents

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that we are making available for review and comment three documents related to the National Animal Identification System: A Draft User Guide, a Program Standards and Technical Reference document, and a technical specification document for the animal tracking databases.

ADDRESSES: All three documents are available on the Internet at *http://animalid.aphis.usda.gov/nais/*. The documents may also be viewed in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT:

- *Draft User Guide:* Dr. Adam Grow; Director, Surveillance and Identification Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737–1231; (301) 734–3752.
- *Program Standards and Technical Reference:* Dr. John F. Wiemers, National Animal Identification Staff, VS, APHIS, 2100 S. Lake Storey Road, Galesburg, IL 61401; (309) 344–1942.
- *Animal Tracking Databases Technical Specifications Document:* Mr. Rich Baca, Team Leader, Veterinary Services Application Information Management, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Bldg B, Mail Stop 2W4, Fort Collins, CO 80526; (970) 494–7346.

SUPPLEMENTARY INFORMATION:

Background

As part of ongoing efforts to safeguard animal health, the U.S. Department of

Agriculture (USDA) initiated implementation of a National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). The purpose of the NAIS is to provide a streamlined information system that will help producers and animal health officials respond quickly and effectively to animal disease events in the United States.

The first component of the program, premises registration, is well underway and the second component, animal identification, is being implemented for several species. The third component, animal tracing, is currently under development with USDA's State and industry partners. Industry, through private systems, and States will manage the animal tracking databases that maintain the movement records of animals. These information systems will provide the locations of a subject animal and the records of other animals that the subject animal came into contact with at each premises. Participation in any component of the program is voluntary.

This notice announces the availability of three documents related to the National Animal Identification System: A Draft User Guide, a Program Standards and Technical Reference document, and a technical specification document for the animal tracking databases.

Draft User Guide for the NAIS

The Draft User Guide provides comprehensive information about participating in the NAIS. Part I of the document provides a brief overview to familiarize producers with the NAIS, its goals, its organizational components, and other information concerning its ongoing implementation. The remainder of the document discusses each of the NAIS' components in greater detail and provides operational-level ''how to'' information and resources. Part II of the document provides information about premises registration; Part III of the document discusses the animal identification component of the program; and Part IV of the document details the animal tracing component.

The Draft User Guide is the most current plan for the NAIS and replaces all previously published program documents, including the 2005 Draft Strategic Plan and Draft Program Standards (announced at 70 FR 23961–23963, May 6, 2005) and the 2006 Strategy for the Implementation of NAIS (announced at 71 FR 17805–17806, April 7, 2006). Those documents provided the opportunity for the public to comment on the NAIS as USDA worked through many issues with industry and the States and Tribes. USDA received valuable feedback from producers, State animal health officials, and other interested stakeholders on the documents and on the program, and made adjustments to the program in response.

The Draft User Guide represents the most up-to-date general information on NAIS today. The NAIS will continue to evolve as details are addressed through ongoing dialogue with all stakeholders.

Program Standards and Technical Reference Document

The Program Standards and Technical Reference document supplements the Draft User Guide and provides, as a separate document, an update for the data element standards that were contained in the 2005 Draft Program Standards. To ensure a uniform, streamlined information system evolves, USDA has established certain data standards, where necessary, to facilitate standardization of information in the NAIS. This document provides the data element standards and other standards relative to the NAIS. Use of these standards by States, Tribes, and industry organizations involved in the administration of the system, manufacturers of identification devices, and other entities that are part of, or that support the NAIS, will ensure that the system is effective. Although the Draft User Guide contains valuable information about NAIS information systems, this Program Standards document is targeted more to entities that are involved in the administration of the program, and thus contains details not appropriate for the User Guide, which is aimed at producers participating in the program.

Animal Tracking Database Technical Specifications Document

USDA is developing a single portal, referred to as the Animal Trace Processing System (ATPS), to allow authorized State and Federal animal health officials to request information from the administrators of the animal tracking databases in certain situations:

- An indication (suspect, presumptive positive, etc.) or confirmed positive test of a foreign animal disease.
- An animal disease emergency as determined by the Secretary of Agriculture and/or State Departments of Agriculture.
- The need to conduct a traceback or traceforward to determine the origin of infection for a program disease (brucellosis, tuberculosis, etc.).

To ensure that the privatization of the animal movement tracking databases progresses in as timely a manner as possible, APHIS initiated the integration of private and State animal tracking databases (ATDs) with the NAIS during an interim/development phase to allow participation in 2006 and early 2007.

Organizations that wished to participate requested USDA evaluations of their systems for consideration. If the system met the interim requirements, the organization had the opportunity to participate in the interim cooperative agreement. As of January 15, 2007, APHIS had entered into interim cooperative agreements with 14 organizations that have databases that meet minimum standards and that wish to support the advancement of the integration of private and State animal tracking databases with the NAIS.

Throughout this interim/development phase, USDA continued to work with participating organizations to design and develop the ATPS and to establish the technical specifications of the ATDs. ATDs in the implementation phase will need to fulfill certain technical requirements to enable them to integrate with the ATPS. The Animal Tracking Database Technical Specifications document contains the specifications for establishing compliant animal tracking databases for the implementation phase. Applications for the implementation (production) phase of the animal tracking databases may be requested by contacting Mr. Rich Baca (see **FOR FURTHER INFORMATION CONTACT**).

Comments about any of these documents or other aspects of the NAIS may be submitted to USDA through the NAIS Web site e-mail address: *animalidcomments@aphis.usda.gov* or by mail to NAIS Program Staff, VS, APHIS, 4700 River Road, Unit 200, Riverdale, MD 20737.

Done in Washington, DC, this 30th day of January 2007.

Nick Gutierrez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–1719 Filed 1–31–07; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Federal Crop Insurance Corporation, Risk Management Agency (RMA), USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C Chapter 35) this notice announces the Risk Management Agency's intention to request an extension for and revision to a currently approved information collection for Notice of Funds Availability—Community Outreach and Assistance Partnership Program.

DATES: Comments on this notice will be accepted until close of business, April 2, 2007.

FOR FURTHER INFORMATION CONTACT: Contact David Wiggins, Civil Rights Office, USDA/RMA, 1400 Independence Avenue, SW., Stop 0805, Washington, DC 20250–0805, telephone (202) 690–2686. Comments may also be submitted electronically to: *David.Wiggins@rma.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Funds Availability—Community Outreach and Assistance Partnership Program.

OMB Number: 0563–0066.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Federal Crop Insurance Corporation administers cooperative agreements that will be used to provide outreach and assistance to under-served agricultural producers such as women, limited resource, socially disadvantaged and other traditionally under-served farmers and rancher (under-served agricultural producers). With this submission, RMA seeks to obtain OMB's approval for an information collection project that will assist RMA in operating and evaluating these programs. The primary objective of the information collection projects is to enable RMA to better evaluate the performance capacity and plans of organizations that are applying for funds for cooperative agreements for the Community Outreach and Assistance Partnership Program.

This information collection package will be used for evaluating applications and awarding partnership agreements, applicants are required to submit materials and information necessary to evaluate and rate the merit of proposed projects and evaluate the capacity and qualification of the organization to complete the project.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 6 hours per response for new applications and 4 hours for renewal applications.

Respondents/Affected Entities: Education institutions, community based and cooperative organizations, and non-profit organizations.

Estimated annual number of respondents: 100.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 100.

Estimated total annual burden on respondents: 967 hours.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, or other collection technologies, e.g. permitting electronic submission of responses. Comments may be sent to David Wiggins, United States Department of Agriculture (USDA), Civil Rights Office, Federal Crop Insurance Corporation, Risk Management Agency, 1400 Independence Avenue, SW., Stop 0805, Washington, DC 20250–0805. All comments will be available for public inspection during regular business hours at the same address.

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

Signed in Washington, DC, on January 26, 2007.

Eldon Gould,

Manager, Federal Crop Insurance Corporation.

[FR Doc. E7–1632 Filed 1–31–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of a petition for trade adjustment assistance (TAA) that was filed by a group of Indiana fresh cut snapdragon producers. Indiana fresh cut snapdragon producers are no longer eligible for TAA benefits in fiscal year 2007.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that U.S. producer prices for Indiana fresh cut snapdragon were 13 percent higher than the base five-year average price. Therefore, producer prices were no longer a contributing factor for program eligibility—a requirement for TAA program eligibility and therefore insufficient grounds to re-certify this petition.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: January 17, 2007.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. E7–1573 Filed 1–31–07; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated the certification of petitions for trade adjustment assistance (TAA) that was filed by the National Grape Cooperative Association representing Michigan and Washington Concord juice grape producers. Concord juice grape producers in these states are no longer eligible for TAA benefits in fiscal year 2007.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that U.S. imports of grape juice fell by 10.1 million liters between 2005 and 2006, a decline of 4 percent. Therefore, imports were no longer a contributing factor for program eligibility. An increase in imports is required for re-certifying a petition for TAA.

FOR FURTHER INFORMATION, CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: January 17, 2007.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. E7–1572 Filed 1–31–07; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath National Forest; California: Round Valley Fuels Reduction and Vegetation Management Project

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to reduce fuels and manage vegetation on about 18,700 acres on the Klamath National Forest in Northern California. The proposal intends to reduce the fuel hazard that leads to uncontrollable wildfire, improve forage for big game, reduce juniper, enhance aspen, and to promote a diverse and resilient forest.

DATES: Comments concerning the scope of the analysis must be received by March 5, 2007. The draft environmental impact statement is expected in September 2007, and the final environmental impact statement is expected in December 2007.

ADDRESSES: Send written comments to Margaret Boland, Forest Supervisor, C/O Kelly Pavlica, Goosenest Ranger District, 37805 Highway 97, Macdoel, CA 96058. Electronic comments must be submitted in a format such as an e-mail message, plain text (.txt), rich text format (.rtf), or Word (.doc) to *comments-pacificsouthwest-klamath-goosenest@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Emelia Barnum, EIS Team Leader, (530) 398–4391, Ext. 5767, or Kelly Pavlica, EIS Co-Team Leader (530) 398–4391, Ext. 5730.

SUPPLEMENTARY INFORMATION: The project is located on the Goosenest Ranger District of the Klamath National Forest. The project area includes Cedar Mountain and continues south to the community of Tennant, California. The legal location is in Township 45 North, Range 1 East, Sections 23–26, 35, 36; Township 45 North, Range 1 West, Sections 19–21, 27–33; Township 44 North, Range 1 East, Sections 1–3, 10–15, 21–28, 33–35; Township 44 North, Range 1 West, Sections 5, 7, 18, 19–20, 29–30; and Township 43 North, Range 1 East, Sections 2, 3, 10, 11, 14 Mount Diablo Meridian. This project is within Management Areas 10 (Riparian Reserve), 14 (Winter Range), 15 (Partial Retention), and 16 (Forage), as designated by the *Klamath National Forest Land and Resource Management Plan* (LRMP). The project is also within the boundaries of the federally recognized wildland urban interface (WUI) of the community of Tennant, California. The project also encompasses or is adjacent to other outlying residential areas and private property.

Purpose and Need for Action

The purpose and need for action is as follows:

- To reduce fuels in order to create a defensible space for fire suppression resources and to decrease the potential for detrimental wildfire effects to the overall project area, the community of Tennant, outlying residents, and private property.
- To improve big game habitat by providing a well-distributed, patchy mosaic of big game cover and browse habitat and by reducing the density of roads.
- To reduce the number of juniper trees to produce forage for wildlife and to allow herbaceous plants to grow.
- To promote thrifty, vigorous trees resilient to environmental factors in multiple stages of development.
- To encourage aspen in areas where conifer encroachment is crowding out the species.

The existing condition of the project area (described below) does not meet the desired conditions described in the LRMP.

- Stand replacing wildfires could take place in much of the project area, due to surface fuels, understory vegetation, and dense stand conditions. A potential exists for wildfires to detrimentally affect the community of Tennant, outlying residents, and private property.
- Ponderosa pine stands within the project area are overstocked for the dry site and highly susceptible to insect-induced mortality, disease and stand replacing fires. These stands are both plantations, planted mostly in the 1980s, and stands that were naturally regenerated after turn of the 20th century railroad logging. Currently, natural regeneration is limited in many of these areas due to poor site conditions. Because of this, several stands in the southern portion of the project area are predominately even-aged.
- Mixed-conifer stands on Cedar Mountain are overstocked for the dry site and highly susceptible to insect-induced mortality, disease and stand replacing fires. Regeneration is abundant in the Cedar Mountain area. Many of the larger, older trees in the area are in poor condition due to increased competition for water and nutrients by the encroachment of trees and brush.
- Western juniper has expanded its range, altering site conditions and vegetative structure and composition. Due to the expansion of juniper, available forage for big game has decreased, and the potential for an uncontrollable wildfire to occur has increased.
- Nearly all stands contain a high component of mature to decadent bitterbrush that is in decline. Decadent bitterbrush is less palatable for deer because it produces less leader growth, which is what deer consume as browse. Decadent bitterbrush is more flammable due to the accumulation of dead plant material, and the plants are more susceptible to mortality from wildfire. The younger age class is absent from many of the mature and decadent bitterbrush stands, and is needed for future replacement of browse.
- Aspen stands are being replaced by conifers near Antelope Creek, due to shading and resource competition. Aspen trees require abundant sunlight to thrive. In addition to abundant sunlight, young aspen require protection from browsing in order to establish. Aspen is considered a keystone species that provides biodiversity across the landscape.

Proposed Action

The Klamath National Forest proposes the following actions to move toward LRMP desired conditions (the total acreage proposed for treatment is about 18,700 acres within the 20,100-acre planning area):

Treatments will include the following:

- *Prescribed underburning:* Approximately 6,440 acres will be underburned in varying intensities to reduce fuels, change future fire behavior, and promote a mosaic of browse age classes and herbaceous seral stages.
- *Brush/small tree mowing:* Approximately 330 acres will be mowed with light mechanical equipment to lower fuel bed heights and promote a mosaic of browse age classes.
- *Defensible space:* Along forest roads 45N10 and 43N20, vegetation will be reduced within 150 feet of the road to provide a defensible space for firefighters in the event of a wildfire. Mowing, thinning, and prescribed underburning will be used as needed to create the defensible space. These treatments will primarily target brush and ladder fuels.
- *Juniper reduction:* Approximately 3,620 acres of juniper reduction is planned throughout the planning area. Where continuous stands of juniper exist, the larger, older trees will be

retained as well as patches of juniper to provide wildlife cover and biodiversity.

• *Aspen enhancement:* Approximately 7 acres of conifers will be removed in order to promote the regeneration of aspen near Antelope Creek. The largest conifers and snags will be retained where safety permits. These acres would not be contiguous but, wherever possible, be placed around openings and locations where aspen is already present.

• *Thinning from below:* Approximately 8,750 acres in natural stands and 2,520 acres in plantations will be thinned to variable spacing. The goal is to reduce aerial and ladder fuels and tree densities, and to promote and maintain larger, more resilient trees, while retaining beneficial elements to wildlife such as structural diversity. Occasionally, we will culture a large tree with desired characteristics by removing trees around it up to one tree-length in distance. Plantation thinning will include concurrent brush mowing.

• *Planting:* Across the southern portion of the project area, approximately 10% of the openings will be planted where natural regeneration failed following turn of the twentieth century railroad logging. These sites will be prepared for planting, and ponderosa pine will be planted. This will begin the development of new age classes within ponderosa pine stands where natural regeneration is scarce. Trees planted will be spaced to a width that will reduce the future fire hazard usually associated with dense plantations.

• *Bald eagle habitat enhancement:* Approximately 135 acres will be identified for bald eagle emphasis. This area will be managed according to the U.S. Fish and Wildlife Service's Pacific Bald Eagle Recovery Plan to promote habitat required by bald eagles for long-term nesting and roosting. The bald eagle is a federally listed Threatened species.

Standard design features, such as protection of heritage sites and no-treatment buffers around caves, will be used. Untreated wildlife areas and variable intensities of treatment will protect resources and provide biodiversity. These non-treatment areas are not included in the above acreage estimates. Forest Service crews, service contracts, stewardship contracts and/or commercial timber sales may implement these actions. All harvesting and mowing activities will be ground-based. Wherever possible, tree tops and limbs will be skidded to the landing to minimize activity-generated slash. Borax will be applied to cut surfaces of stumps 14 inches and greater to prevent development of annosus root disease infection centers.

To facilitate stand access for project activities, a few temporary road spurs will be created or reopened, and several existing unauthorized roads will be used. Approximately 4 miles of new temporary road spurs will be closed and re-vegetated after project implementation. In an effort to bring roads from an unmanaged condition to a managed condition, up to 17 miles of existing unauthorized roads that are needed for travel management and access will be added to Forest System, and about 13 miles of existing roads (both authorized and unauthorized) will be closed.

Roads proposed for closure are: 44N10Y.2, 44.14.3, 44N28.1, 44N92, 22N93.1C, 44N93.1C1, 45N10A, 45N10B, 45N10C, 45N10D, 45N10E, 45N10F, 45N11A.1, 45N21Y.1, 5Q003.1, 5Q003.2, 6Q003.1, and 6Q003.1A. A seasonal closure from January 1 to August 31 is proposed for 45N10 (approximately 3.2 miles north of county road 6Q003 at the existing gate).

Responsible Official

Margaret Boland, Forest Supervisor, Klamath National Forest, 1312 Fairlane Road, Yreka, CA 96097–9549.

Nature of Decision To Be Made

The decision to be made is whether to implement the action as proposed, not to implement the Proposed Action, or to implement an alternative.

Scoping Process

If you have information you feel the Forest Service may not be aware of, or feel you have issues (points of dispute, debate, or disagreement) regarding potential effects of this proposed action, please contact Kelly Pavlica at the Goosenest Ranger District, 37805 Highway 97, Macdoel, CA 96058, (530) 398–4391, within 30 days of publication of this notice. We will use any significant issues that are identified to develop alternatives to the Proposed Action.

All input and comments received during project planning are a matter of public record. Names and addresses of participants are not confidential. If you are interested participating in a field visit to the proposed project area please contact Kelly Pavlica at the number listed above. A field trip with interested participants will be arranged.

Permits or Licenses Required

We are requesting temporary road access to the northern portion of the project area from a private landowner.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. For questions about the project, please contact Kelly Pavlica at (530) 398–4391.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: January 23, 2007.

Margaret J. Boland,

Forest Supervisor.

[FR Doc. E7–1606 Filed 1–31–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service an agency delivering the U.S. Department of Agriculture (USDA) Rural Development Utilities Programs, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by April 2, 2007.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Acting Director, Program Development & Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., STOP 1522, Room 5168 South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implanting provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption 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 on other forms of information technology. Comments may be sent to: Joyce McNeil, Program Development and Regulatory Analysis, USDA Rural Development, 1400 Independence Ave., SW., Room 5166-South, STOP 1522, Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: 7 CFR part 1777, Section 306C Water and Waste Disposal (WWD) Loans and Grants.

OMB Control Number: 0572–0109.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) authorizes the Rural Utilities Service to make loans and grants to low-income rural communities whose residents face significant health risks. These communities do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities. The loans and grants will be available to provide water and waste disposal facilities and services to these communities, as determined by the Secretary.

The Section 306C WWD Loans and Grants program is administered through 7 CFR part 1777.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Not for profits; State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, at (202) 720–0812. FAX: (202) 720–4120.

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.

Dated: January 24, 2007.

James M. Andrew,

Administrator, Rural Utilities Service.

[FR Doc. E7–1579 Filed 1–31–07; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

DATE AND TIME: Friday, February 9, 2007. 9 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

COMMISSION MEETING: U.S. Commission on Civil Rights, Friday, February 9, 2007, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425, 9 a.m.

MEETING AGENDA

I. Approval of Agenda.
II. Approval of Minutes of January 26 Meeting.
III. Announcements.
IV. Staff Director's Report.
V. Management and Operations:
- Quality Information Guidelines.

VI. Program Planning:
- Program Planning FY 2009.
- Affirmative Action in Law Schools Briefing Report.
- Domestic Wiretapping.

VII. State Advisory Committee Issues:
- Alabama SAC.

VIII. Future Agenda Items.
IX. Adjourn.

Dated: January 30, 2007.

David Blackwood,

General Counsel.

[FR Doc. 07–465 Filed 1–30–07; 2:49 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the African American Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee on the African American Population. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by February 22, 2007.

ADDRESSES: Please submit nominations to Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory

Committee Office, U.S. Census Bureau, Room 8H156, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at (301) 457–8608, or e-mail to: *edwina.martha.jaramillo@census.gov.*

FOR FURTHER INFORMATION CONTACT: Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 8H156, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–4047.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between African American communities and the Census Bureau. Committee members identify useful strategies to encourage census participation within the African American population, and on ways data can be disseminated for maximum usefulness to the African American population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Members will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending Advisory Committee needs and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, technical expertise, community involvement, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of the African American community. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the African American population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (résumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: January 29, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–1629 Filed 1–31–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the American Indian and Alaska Native Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee on the American Indian and Alaska Native Populations. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by February 22, 2007.

ADDRESSES: Please submit nominations to Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 8H156, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at (301) 457–8608, or e-mail to: *edwina.martha.jaramillo@census.gov.*

FOR FURTHER INFORMATION CONTACT: Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 8H156, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–4047.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between American Indian and Alaska Native communities and the Census Bureau. Committee members identify useful strategies to encourage census participation within the American Indian and Alaska Native population, and on ways data can be disseminated for maximum usefulness to the American Indian and Alaska Native population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Members will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending Advisory Committee needs and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, and technical expertise, community involvement and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of the American Indian and Alaska Native community. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the American Indian and Alaska Native population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (résumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: January 29, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–1628 Filed 1–31–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Asian Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee on the Asian Population. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by February 22, 2007.

ADDRESSES: Please submit nominations to Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 8H156, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at (301) 457–8608, or e-mail to: *edwina.martha.jaramillo@census.gov.*

FOR FURTHER INFORMATION CONTACT: Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 8H156, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–4047.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Asian communities and the Census Bureau. Committee members identify useful strategies to encourage census participation within the Asian population, and on ways data can be disseminated for maximum usefulness to the Asian population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Members will be re-evaluated at the conclusion of the three-year term with the prospect of renewal, pending Advisory Committee needs and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, technical expertise, community involvement, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of the Asian community. Such knowledge and expertise is needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Asian population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (résumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: January 29, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–1627 Filed 1–31–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Population. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by February 22, 2007.

ADDRESSES: Please submit nominations to Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 8H156, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at (301) 457–8608, or e-mail to: *edwina.martha.jaramillo@census.gov*.

FOR FURTHER INFORMATION CONTACT: Edwina Jaramillo, Race and Ethnic Advisory Committee Program Coordinator, Census Advisory Committee Office, U.S. Census Bureau, Room 8H156, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–4047.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Native Hawaiian and Other Pacific Islander communities and the Census Bureau. Committee members identify useful strategies to encourage census participation within the Native Hawaiian and Other Pacific Islander population, and on ways data can be disseminated for maximum usefulness to the Native Hawaiian and Other Pacific Islander population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Members will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending Advisory Committee needs and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, technical expertise, community involvement, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of the Native Hawaiian and Other Pacific Islander community. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Native Hawaiian and Other Pacific Islander population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (résumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: January 29, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–1626 Filed 1–31–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year (''Sunset Review'') of the antidumping and countervailing duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers this same order.

DATES: *Effective Date:* February 1, 2007.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review(s)* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Initiation of Reviews

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–427–820	731–TA–913	France	Stainless Steel Bar	Brandon Farlander (202) 482–0182.
A–428–830	731–TA–914	Germany	Stainless Steel Bar	Brandon Farlander (202) 482–0182.
A–475–829	731–TA–915	Italy	Stainless Steel Bar	Brandon Farlander (202) 482–0182.
A–580–847	731–TA–916	South Korea	Stainless Steel Bar	Brandon Farlander (202) 482–0182.
A–412–822	731–TA–918	United Kingdom	Stainless Steel Bar	Brandon Farlander (202) 482–0182.
C–475–830	701–TA–413	Italy	Stainless Steel Bar	Brandon Farlander (202) 482–0182.

Suspended Investigations

No suspended investigations are scheduled for initiation in February 2007.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the Department's regulations regarding Sunset Reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of Sunset Reviews, case history information (i.e., previous margins, duty absorption determinations, scope language, import volumes), and service lists available to the public on the Department's sunset Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/*. All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required from Interested Parties

Domestic interested parties (defined in section 771(9) (C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in these Sunset Reviews must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the orders without further review. *See* 19 CFR 351.218(d)(1)(iii).

For sunset reviews of countervailing duty orders, parties wishing the Department to consider arguments that countervailable subsidy programs have been terminated must include with their substantive responses information and documentation addressing whether the changes to the program were (1) limited to an individual firm or firms and (2) effected by an official act of the government. Further, a party claiming program termination is expected to document that there are no residual benefits under the program and that substitute programs have not been introduced. *Cf.* 19 CFR 351.526 (b) and (d). If a party maintains that any of the subsidies countervailed by the Department were not conferred pursuant to a subsidy program, that party should nevertheless address the applicability of the factors set forth in 19 CFR 351.526 (b) and (d). Similarly, parties wishing the Department to consider whether a company's change in ownership has extinguished the benefit from prior non-recurring, allocable, subsidies must include with their substantive responses information

and documentation supporting their claim that all or almost all of the company's shares or assets were sold in an arm's length transaction, at a price representing fair market value, as described in the *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act,* 68 FR 37125 (June 23, 2003) (Modification Notice). *See Modification Notice* for a discussion of the types of information and documentation the Department requires.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 24, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–1655 Filed 1–31–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Upcoming Sunset Reviews.

SUPPLEMENTARY INFORMATION:

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for March 2007

The following Sunset Review is scheduled for initiation in March 2007 and will appear in that month's Notice of Initiation of Five-year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Automotive Replacement Glass Windshields from China (A–570–867)	Juanita Chen (202) 482 1904.
Countervailing Duty Proceedings	
No countervailing duty orders are scheduled for initiation in March 2007.	
Suspended Investigations	
No suspended investigations are scheduled for initiation in March 2007..	

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3--Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (''Sunset Policy Bulletin''). The Notice of Initiation of Five-year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Puruant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 15 days of the publication of the Notice of Initition.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 24, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–1656 Filed 1–31–07; 8:45 am]

BILLING CODE 3510–DS–S

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011907C]

Atlantic Highly Migratory Species; Exempted Fishing Permits

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

ACTION: Notice.

SUMMARY: NMFS has decided not to proceed with issuing exempted fishing permits (EFPs) to collect data during Atlantic billfish tournaments to evaluate the impacts of J-style fishing hooks (J-hooks) and heavy tackle on Atlantic blue marlin. NMFS may consider potential strategies or mechanisms to mitigate impacts on tournaments in the future.

FOR FURTHER INFORMATION CONTACT: Russell Dunn or Randy Blankinship, 727–824–5399; fax: 727–824–5398.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic Highly Migratory Species (HMS). NMFS received EFP applications from five Atlantic billfish tournament operators on behalf of 15 tournaments requesting exemptions from requirements for anglers fishing from HMS permitted vessels and participating in Atlantic billfish tournaments to use non-offset circle hooks when using natural bait and natural bait/artificial lure combinations. The requests were received for tournaments that would operate in the U.S. Southeast Atlantic and Gulf of Mexico.

NMFS has considered public comment received on the final Environmental Impact Statement for the final Consolidated HMS Fishery Management Plan (October 2, 2006; 71 FR 58058); comment received during the October 3–4, 2006, Highly Migratory Species Advisory Panel meeting (August 30, 2006; 71 FR 51577); and public comment received in response to a notice of intent to issue EFPs (November 27, 2006; 71 FR 68558). Comments received expressed concern over the difficulty of standardizing fishing gear type and use in a tournament setting. Comments also expressed concern over the quality of data collected in a tournament setting and the data's scientific applicability given the fishing characteristics of tournaments (fast paced activity, focus on catching and retaining specific species and/or size classes, and varying tournament rules). Finally, comments were received that expressed a general lack of support for conducting research and/or data collection in tournaments for the reasons stated above. NMFS worked with billfish tournament constituents to address the concerns over study design and data collection; however, difficulty continued in resolving many of the concerns.

As a result, NMFS has determined that collection of data to evaluate the impacts of J-hooks and heavy tackle on Atlantic blue marlin during billfish tournaments in the U.S. Atlantic and Gulf of Mexico would be problematic because of the varying conditions and methodologies discussed above that would likely occur within tournaments and between tournaments. NMFS will consider potential strategies and mechanisms other than EFPs to mitigate the impacts of specific hook requirements on Atlantic billfish tournaments and tournament participants in future rulemaking.

Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: January 29, 2007.

Alan D. Risenhoover,

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

[FR Doc. 07–440 Filed 1–29–07; 2:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011807C]

Fisheries of the Northeast Region; Fisheries of the Southeast Region; Fisheries off West Coast States; and Fisheries in the Western Pacific

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

ACTION: Notification of determinations of overfishing, and a need to revise a rebuilding plan.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that overfishing is occurring in fisheries for northeast winter skate; Gulf of Mexico (GOM) gag and gray triggerfish; and Eastern Pacific Ocean yellowfin tuna. NMFS has also determined that the rebuilding plan for GOM greater amberjack needs to be revised. NMFS notified the respective regional fishery management councils (Councils) responsible for these fisheries of its determinations by letter. The Councils are required to take action within one year following NMFS notification that overfishing is occurring or a stock is approaching overfishing, a stock is overfished or approaching an overfished condition, or existing remedial action taken to end overfishing or rebuild an overfished stock has not resulted in adequate progress.

FOR FURTHER INFORMATION CONTACT: Mark Millikin, telephone: (301) 713-2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS sends written notification to fishery management councils when overfishing is occurring or a stock is approaching overfishing; a stock is overfished or approaching an overfished condition, or existing action taken to end previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress. On October 11, 2006, the NMFS Southeast Regional Administrator sent a letter, notifying the Gulf of Mexico Fishery Management Council (GOM Council) that overfishing is occurring in GOM gag and gray triggerfish. Pursuant to section 304(e)(7) of the Magnuson-Stevens Act , NMFS also notified the GOM Council in the same letter that the rebuilding plan for GOM greater amberjack needs to be revised so that it can still rebuild to the stock's target biomass (B_{msy}) by the end of the time frame for that stock's rebuilding plan.

On October 17, 2006, the NMFS Northeast Regional Administrator sent a letter notifying the New England Fishery Management Council that overfishing is occurring in the winter skate fishery.

On October 25, 2006, the NMFS Southwest Regional Administrator sent a letter notifying the Pacific Fishery Management Council that overfishing is occurring on the Eastern Pacific Ocean stock of yellowfin tuna.

Copies of the notification letters sent to the fishery management councils for the aforementioned determinations are

available at *http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm.*

Within one year of a notification under Magnuson-Stevens Act sections 304(e)(2) or (e)(7), the respective Council must take remedial action in response to the notification, to end overfishing if overfishing is occurring; rebuild an overfished stock or stock complex to the abundance that can produce maximum sustainable yield within an appropriate time frame; prevent overfishing from occurring if a stock is approaching overfishing; and/or prevent a stock from becoming overfished if it is approaching an overfished condition (see implementing regulations at 50 CFR 600.310(e)(3)). Such action must be submitted to NMFS within one year of notification and may be in the form of a new fishery management plan (FMP), an FMP amendment, or proposed regulations.

Dated: January 29, 2007.

James P. Burgess,

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

[FR Doc. E7–1659 Filed 1–31–07; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled AmeriCorps*NCCC Service Project Application to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Charles Davenport at (202) 606–7516. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register:**

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on September 19, 2006. This comment period ended November 20, 2006. No comments were received.

Description: The Corporation is seeking to renew with minor revisions its AmeriCorps*NCCC Service Project Application, OMB Control Number 3045–0010. The Service Project Application is used to collect information from potential AmeriCorps*NCCC service project sponsors to assist with the development of service projects that will receive the support of AmeriCorps members.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*NCCC Service Project Application Form.

OMB Number: 3045–0010.

Agency Number: None.

Affected Public: Organizations seeking AmeriCorps*NCCC assistance.

Total Respondents: 700.

Frequency: Annually.

Average Time Per Response: Seven hours.

Estimated Total Burden Hours: 4,900 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 25, 2007.

Merlene Mazyck,

*Director, AmeriCorps*National Civilian Community Corps.*

[FR Doc. E7–1577 Filed 1–31–07; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection Renewal; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed revision of its Peer Reviewer Application (OMB Number 3045–0090). Copies of the forms can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 2, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to: Vielka Garibaldi at *vgaribaldi@cns.gov.*

(2) By fax to 202–606–3477, Attention: Vielka Garibaldi.

(3) By mail sent to: Corporation for National and Community Service, Office of Grant Policy and Operations, 9th Floor, Attn: Vielka Garibaldi, Associate Director for Grant Review Operations, Room 9807; 1201 New York Avenue NW., Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at 1225 New York Avenue, 8th Floor (Suite 8100) at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

ADDRESSES: Send comments to Vielka Garibaldi, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Vielka Garibaldi, (202) 606–6886, or by e-mail at *vgaribaldi@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

The Corporation for National and Community Service (the Corporation) connects Americans of all ages and backgrounds with opportunities to give back to their communities and country through three programs: AmeriCorps, Learn and Serve America, and Senior Corps. The Corporation provides grants to support people and organizations that use service as a strategy for addressing national and community needs. As part of its review process the Corporation uses peer reviewers to determine the quality of the grant applications we receive. The peer reviewer application forms are used by individuals wishing to serve as peer reviewers or peer review panel facilitators for the Corporation grant review processes. The information collected will be used by the Corporation to select peer reviewers for each grant competition. All individuals interested in applying as peer reviewers or facilitators of the peer review panels will be required to complete an electronic application using eGrants, the Corporation's Web-based grant management system.

Current Action

The Corporation seeks to renew and revise the current peer reviewer application form. When revised, the application will revise/clarify eGrants instructions to reflect adjustments to the Corporation for National and Community Service's web-based system for grant management. The application will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expired on October 31, 2007. Modifications include instructions related to log-in into e-Grants and enhancements to the personal profile, contact information section, and areas or expertise.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Peer Reviewer Application.

OMB Number: 3045–0090.

Agency Number: None.

Affected Public: Individuals who are interested in serving as a peer reviewer or peer review panel facilitator.

Total Respondents: 2,500 responses annually.

Frequency: One time to complete and update as needed.

Average Time Per Response: Total of 40 minutes.

Estimated Total Burden Hours: 1,666 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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

Dated: January 26, 2007.

Marlene Zakai,

Director, Office of Grants Policy and Operation.

[FR Doc. E7–1578 Filed 1–31–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 5, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: January 25, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Application for Grants under Disability and Rehabilitation Research.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Individuals or household; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,000.

Burden Hours: 20,000.

Abstract: NIDRR provides grants for research and related activities in Rehabilitation of Individuals with

disabilities. The grant application package contains program profiles, standard forms, program regulations, sample rating forms, and transmitting instructions. Applicants are primarily institutions of higher education, but may also include hospitals, State Rehabilitation education agencies and voluntary and profit organizations. The public will note that there have been no changes to the collection's contents since it was last available to them.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3258. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–1594 Filed 1–31–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 2, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 26, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Extension.

Title: What Works Clearinghouse Database Forms and Customer Surveys.

Frequency: On Occasion.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,273.

Burden Hours: 861.

Abstract: The What Works Clearinghouse (WWC) public submission databases will allow members of the public to submit nominations for studies, interventions, and topics that they would like the WWC to review. The evaluator database will enable the WWC to provide the public with a directory of available evaluators. Data from the customer surveys will be used to create indicators of how successfully the WWC is meeting the needs of various groups of its users.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3273. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–1596 Filed 1–31–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 2, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 26, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: The Effect of Connected Mathematics 2(CM2) on the Math Achievement of Middle School Students.

Frequency: Monthly; Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 11,410.

Burden Hours: 3,488.

Abstract: This study will address the methodological flaws in the existing research base on Connected Mathematics 1 (CM1) by incorporating methodological lessons from the What Works Clearinghouse review of CM1, as reported in the Intervention Report on the website, into the current study design of Connected Mathematics 2 (CM2). This will, to our knowledge, be the first formal study to look at the efficacy of CM2. Understanding the effects of curricula like CM2 will provide more evidence for ED in developing evidence-based approaches to mathematics instruction and informing parents and schools about those approaches. The primary respondents in this study will be 6th grade math students and their teachers.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3271. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW, Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–1597 Filed 1–31–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Credit Enhancement for Charter School Facilities Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.354A.

Dates: Applications Available: February 1, 2007.

Date of Pre-Application Meeting: March 20, 2007.

Deadline for Transmittal of Applications: April 2, 2007.

Deadline for Intergovernmental Review: June 1, 2007.

Eligible Applicants: (A) A public entity, such as a State or local governmental entity; (B) A private, nonprofit entity; or (C) A consortium of entities described in (A) and (B).

Note: The Secretary will make, if possible, at least one award in each of the three categories of eligible applicants.

Estimated Available Funds: The Administration has requested $36,611,190 for this program for FY 2007. 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.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in future years from the list of unfunded applications from this competition.

Note: The Department is not bound by any estimates in this notice.

Project Period: From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides grants to eligible entities to permit them to enhance the credit of charter schools so that they can access private-sector and other non-Federal capital in order to acquire, construct, and renovate facilities at a reasonable cost. Grant projects awarded under this program will be of sufficient size, scope, and quality to enable the grantees to implement effective strategies for reaching that objective.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 225.12).

Competitive Preference Priority: For FY 2007 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 15 points to an application, depending on how well the application meets this priority.

This priority is:

The capacity of charter schools to offer public school choice in those communities with the greatest need for school choice based on—

(1) The extent to which the applicant would target services to geographic areas in which a large proportion or number of public schools have been identified for improvement, corrective action, or restructuring under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001;

(2) The extent to which the applicant would target services to geographic areas in which a large proportion of students perform below proficient on State academic assessments; and

(3) The extent to which the applicant would target services to communities

with large proportions of students from low-income families.

Program Authority: 20 U.S.C. 7223–7223j.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

(b) The regulations for this program in 34 CFR part 225.

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 only to institutions of higher education.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $36,611,190 for this program for FY 2007. 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.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in future years from the list of unfunded applications from this competition.

Note: The Department is not bound by any estimates in this notice.

Project Period: From the start date indicated on the grant award document until the Federal funds and earnings on those funds have been expended for the grant purposes or until financing facilitated by the grant has been retired, whichever is later.

III. Eligibility Information

1. *Eligible Applicants:* (A) A public entity, such as a State or local governmental entity; (B) A private, nonprofit entity; or (C) A consortium of entities described in (A) and (B).

Note: The Secretary will make, if possible, at least one award in each of the three categories of eligible applicants.

2. *Cost Sharing or Matching:* This program does not involve any cost sharing or matching.

3. *Other:* The charter schools that a grantee selects to benefit from this program must meet the definition of a charter school, as defined in section 5210(1) of the ESEA, as amended.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.* If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.354A.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting one of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

In addition, applications will be available at *http://www.ed.gov/programs/charterfacilities/applicant.html*

2. *Content and Form of Application Submission:* Each Credit Enhancement for Charter School Facilities program application must include the following specific elements:

(a) A statement identifying the activities proposed to be undertaken with grant funds (the ''grant project''), including how the applicant will determine which charter schools will receive assistance, and how much and what types of assistance these schools will receive.

(b) A description of the involvement of charter schools in the application's development and in the design of the proposed grant project.

(c) A description of the applicant's expertise in capital markets financing. (Consortium applicants must provide this information for each of the participating organizations.)

(d) A description of how the proposed grant project will leverage the maximum amount of private-sector and other non-Federal capital relative to the amount of Credit Enhancement for Charter School Facilities program funding used and how the proposed grant project will otherwise enhance credit available to charter schools.

(e) A description of how the eligible entity possesses sufficient expertise in education to evaluate the likelihood of success of a charter school program for which facilities financing is sought.

(f) In the case of an application submitted by a State governmental entity, a description of current and planned State funding actions including other forms of financial assistance that ensure that charter schools within the State receive the funding they need to have adequate facilities.

Additional requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: We have found that reviewers are able to conduct the highest-quality review when applications are concise and easy to read. Applicants are encouraged to limit their applications to no more than 40 double-spaced pages (not including the required forms and tables), to use a 12-point or larger-size font with one-inch margins at the top, bottom, and both sides, and to number pages consecutively. Furthermore, applicants are strongly encouraged to include a table of contents that specifies where each required part of the application is located.

3. *Submission Dates and Times:*

Applications Available: February 1, 2007.

Date of Pre-Application Meeting: March 20, 2007.

Deadline for Transmittal of Applications: April 2, 2007.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Deadline for Intergovernmental Review: June 1, 2007.

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:*

(a) *Reserve accounts.* Grant recipients, in accordance with State and local law, must deposit the grant funds they receive under this program (other than funds used for administrative costs) in a reserve account established and maintained by the grantee for this purpose. Amounts deposited in such

account shall be used by the grantee for one or more of the following purposes in order to assist charter schools in accessing private-sector and other non-Federal capital:

(1) Guaranteeing, insuring, and reinsuring bonds, notes, evidences of debt, loans, and interests therein.

(2) Guaranteeing and insuring leases of personal and real property.

(3) Facilitating financing by identifying potential lending sources, encouraging private lending, and other similar activities that directly promote lending to, or for the benefit of, charter schools.

(4) Facilitating the issuance of bonds by charter schools or by other public entities for the benefit of charter schools, by providing technical, administrative, and other appropriate assistance (such as the recruitment of bond counsel, underwriters, and potential investors and the consolidation of multiple charter school projects within a single bond issue).

Funds received under this program and deposited in the reserve account must be invested in obligations issued or guaranteed by the United States or a State, or in other similarly low-risk securities. Any earnings on funds, including fees, received under this program must be deposited in the reserve account and be used in accordance with the requirements of this program.

(b) *Charter school objectives.* An eligible entity receiving a grant under this program must use the funds deposited in the reserve account to assist charter schools in accessing capital to accomplish one or both of the following objectives:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (which may be an interest held by a third party for the benefit of a charter school) in improved or unimproved real property that is necessary to commence or continue the operation of a charter school.

(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school.

(c) *Other.* Grantees must ensure that all costs incurred using funds from the reserve account are reasonable. The full faith and credit of the United States are not pledged to the payment of funds under such obligation.

Applicants that are selected to receive an award must enter into a written Performance Agreement with the Department prior to drawing down funds, unless the grantee receives written permission from the Department in the interim to draw down a specific limited amount of funds. Grantees must maintain and enforce standards of conduct governing the performance of their employees, officers, directors, trustees, and agents engaged in the selection, award, and administration of contracts or agreements related to this grant. The standards of conduct must mandate disinterested decision-making.

A grantee may use not more than 0.25 percent (one quarter of one percent) of the grant funds for the administrative costs of the grant.

The Secretary, in accordance with chapter 37 of title 31, United States Code, will collect all of the funds in the reserve account established with grant funds (including any earnings on those funds) if the Secretary determines that the grantee has permanently ceased to use all or a portion of the funds in such account to accomplish the purposes described in the authorizing statute and the Performance Agreement or, if not earlier than two years after the date on which the entity first receives these funds, the entity has failed to make substantial progress in undertaking the grant project.

The charter schools that a grantee selects to benefit from this program must meet the definition of a charter school, as defined in section 5210(1) of the ESEA, as amended.

(d) We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Credit Enhancement for Charter School Facilities Program—CFDA Number 84.354A must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Credit Enhancement for Charter School Facilities Program at *http://www.Grants.gov.* You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.354, not 84.354A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include

(1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Ann Margaret Galiatsos or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W245, Washington, DC 20202–6140. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.354A), 400 Maryland Avenue, SW., Washington, DC 20202–4260

or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.354A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.354A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 225.11 and are listed in this section. The maximum score for all the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses. Each criterion also includes the factors that the reviewers will consider to determine how well an application meets the criterion. We encourage applicants to make explicit connections to the selection criteria and factors in their applications.

A. *Quality of project design and significance.* (35 points)

In determining the quality of project design and significance, the Secretary considers—

(1) The extent to which the grant proposal would provide financing to charter schools at better rates and terms than they can receive absent assistance through the program;

(2) The extent to which the project goals, objectives, and timeline are clearly specified, measurable, and appropriate for the purpose of the program;

(3) The extent to which the project implementation plan and activities, including the partnerships established, are likely to achieve measurable objectives that further the purposes of the program;

(4) The extent to which the project is likely to produce results that are replicable;

(5) The extent to which the project will use appropriate criteria for selecting charter schools for assistance and for determining the type and amount of assistance to be given;

(6) The extent to which the proposed activities will leverage private or public-sector funding and increase the number and variety of charter schools assisted in meeting their facilities needs more than would be accomplished absent the program;

(7) The extent to which the project will serve charter schools in States with strong charter laws, consistent with the criteria for such laws in section 5202(e)(3) of the Elementary and Secondary Education Act of 1965; and

(8) The extent to which the requested grant amount and the project costs are reasonable in relation to the objectives, design, and potential significance of the project.

B. *Quality of project services.* (15 points)

In determining the quality of the project services, the Secretary considers—

(1) The extent to which the services to be provided by the project reflect the identified needs of the charter schools to be served;

(2) The extent to which charter schools and chartering agencies were involved in the design of, and demonstrate support for, the project;

(3) The extent to which the technical assistance and other services to be provided by the proposed grant project involve the use of cost-effective strategies for increasing charter schools' access to facilities financing, including the reasonableness of fees and lending terms; and

(4) The extent to which the services to be provided by the proposed grant project are focused on assisting charter schools with a likelihood of success and the greatest demonstrated need for assistance under the program.

C. *Capacity.* (35 points)

In determining an applicant's business and organizational capacity to carry out the project, the Secretary considers—

(1) The amount and quality of experience of the applicant in carrying out the activities it proposes to undertake in its application, such as enhancing the credit on debt issuances, guaranteeing leases, and facilitating financing;

(2) The applicant's financial stability;

(3) The ability of the applicant to protect against unwarranted risk in its loan underwriting, portfolio monitoring, and financial management;

(4) The applicant's expertise in education to evaluate the likelihood of success of a charter school;

(5) The ability of the applicant to prevent conflicts of interest, including conflicts of interest by employees and members of the board of directors in a decision-making role;

(6) If the applicant has co-applicants (consortium members), partners, or other grant project participants, the specific resources to be contributed by each co-applicant (consortium member), partner, or other grant project participant to the implementation and success of the grant project;

(7) For State governmental entities, the extent to which steps have been or will be taken to ensure that charter schools within the State receive the funding needed to obtain adequate facilities; and

(8) For previous grantees under the charter school facilities programs, their performance in implementing these grants.

D. *Quality of project personnel.* (15 points)

In determining the quality of project personnel, the Secretary considers—

(1) The qualifications of project personnel, including relevant training and experience, of the project manager and other members of the project team, including consultants or subcontractors; and

(2) The staffing plan for the grant project.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in 34 CFR 225.12.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S.

Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may also notify you informally.

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:* Applicants selected for funding will be required to submit the following reports to the Department:

(a) An annual report that includes the information from section 5227(b) of the ESEA and any other information the Secretary may require in the performance report.

(b) A semiannual report that includes internal financial statements and other information as the Secretary may require.

Grantees must also cooperate and assist the Department with any periodic financial and compliance audits of the grantee, as determined necessary by the Department. The specific Performance Agreement between the grantee and the Department may contain additional reporting requirements.

(c) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary.

4. *Performance Measures:* The performance measures for this program are: (1) The amount of funding grantees leverage for charter schools to acquire, construct, and renovate school facilities and (2) the number of charter schools served. Grantees must provide this information as part of their annual performance reports.

VII. Agency Contacts

For Further Information Contact: Ann Margaret Galiatsos or Jim Houser, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W245, Washington, DC 20202–6140. Telephone: (202) 205–9765 or by e-mail: *charter.facilities@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 26, 2007.

Morgan S. Brown,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E7–1537 Filed 1–31–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Voluntary Public School Choice Program (VPSC); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.361A

Dates: Applications Available: February 1, 2007.

Deadline for Notice of Intent to Apply: February 26, 2007.

Deadline for Transmittal of Applications: April 2, 2007.

Deadline for Intergovernmental Review: June 1, 2007.

Eligible Applicants:

(a) One or more State educational agencies (SEAs);

(b) One or more local educational agencies (LEAs);

(c) One or more SEAs in partnership with one or more LEAs or other public, for-profit, or non-profit entities; or

(d) One or more LEAs in partnership with one or more public, for-profit, or non-profit entities.

Note: For regulations governing partnership applications, see 34 CFR 75.127 through 75.129.

Estimated Available Funds: The Administration has requested $26,278,000 for this program for FY 2007. 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 before the end of the current fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: $700,000–$3,000,000 per year.

Estimated Average Size of Awards: $2,000,000 per year.

Estimated Number of Awards: 10–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides grants for eligible applicants to establish or expand a program of voluntary public school choice. This public school choice program must focus on providing parents with greater options in acquiring a high-quality public education for their children, particularly parents whose children currently attend schools in need of improvement as defined in section 1116(b) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA).

Priorities: This notice contains five competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv) and (b)(2)(v), Competitive Preference Priorities 1 through 3 are from section 5244 of the ESEA (20 U.S.C. 7225c) and Competitive Preference Priorities 4 and 5 are from the notice of final priorities for discretionary grant programs published in the **Federal Register** on October 11, 2006 (71 FR 60046).

Competitive Preference Priorities: For FY 2007, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2), we give preference to and award up to 60 points to an application that meets one or more of these priorities over an application that does not meet one or more of these priorities.

These priorities are:

Competitive Preference Priority 1: Partnership/Interdistrict Approach. Up to 20 points for establishing or expanding a partnership that implements an interdistrict approach to carrying out a public school choice program. This priority focuses on implementing different models of interdistrict choice arrangements that foster collaboration and cooperation between LEAS in order to expand options for students to attend higher-performing schools.

Note: In determining whether a proposed project would implement interdistrict choice, the Department will consider, among other things, a written partnership agreement between two or more school districts to accept students as transfers from low-performing schools in one school district to higher-performing schools in another school district.

Background: The ESEA requires LEAs that have Title I schools identified for improvement, but cannot provide the students attending those identified schools with the option to attend another school within the LEA, to the extent practicable, to enter into partnerships with other LEAs that can accept their students as transfers. Other LEAs that have schools identified for improvement, even if they can provide some choice within the LEA, may also enter into such partnerships to provide a broader range of educational options. However, very few students have participated in interdistrict choice programs under the Title I choice provisions, and the failure or inability of LEAs to enter into interdistrict agreements has likely contributed to the very limited participation in Title I choice arrangements nationally. (Only one percent of students eligible to change schools under the Title I provisions have done so.)

However, surveys and other data clearly show that parents and students will take advantage of interdistrict choice opportunities when they are made available. Existing interdistrict choice arrangements are well-subscribed. The Secretary believes that expanding interdistrict choice arrangements will give students enrolled in schools identified for improvement much broader choices in transferring to higher-performing schools. The Department is focusing this competition on an interdistrict choice priority by providing a significant number of points for applicants that propose to use interdistrict approaches to public school choice.

Competitive Preference Priority 2: Wide Variety of Choices. Up to 10 points for providing a wide variety of choices to all students in participating schools.

Note: In determining whether a proposed project would provide a wide variety of choices, the Department will consider, among other things, the characteristics of the school district. For example, a wide variety of choices in a small rural district may differ from a wide variety of choices in a large urban district.

Competitive Preference Priority 3: Substantial Impact on Students in Low-Performing Schools. Up to 10 points for having a substantial impact, through various choice options, in allowing students in low-performing schools to attend higher-performing schools.

Note: In determining whether a proposed project would have a substantial impact in allowing students in low-performing schools to attend higher-performing schools, the Department will consider, among other things, the percentage of students in low-performing schools who would be able to attend higher-performing schools under the jurisdiction of the applicant and/or neighboring school district jurisdictions.

Competitive Preference Priority 4: Secondary Schools. Up to 10 points for projects that support activities and interventions aimed at improving the academic achievement of secondary school students who are at greatest risk of not meeting challenging State academic standards and not completing high school.

Competitive Preference Priority 5: Student Achievement Data. Up to 10 points for projects that collect pre- and post-intervention test data to assess the effect of the projects on the academic achievement of student participants relative to appropriate comparison or control groups.

Statutory And Regulatory Requirements

Permissible Activities: Activities supported under this competition must establish or expand a program of public school choice and may involve one or more of the following:

- The cost of providing students selected to participate in the program with transportation services or a substantial portion of the cost of transportation to and from the public elementary schools and secondary schools, including charter schools, that the students choose to attend under the public school choice program.
- The cost of planning or designing a program (for not more than one year).
- The cost of making tuition transfer payments to public elementary or secondary schools to which students transfer under the program.
- The cost of capacity-enhancing activities that enable high-demand public elementary or secondary schools to accommodate transfer requests under the program.
- The cost of carrying out public education campaigns to inform students and parents about the program.
- The cost of other activities reasonably necessary to implement the program.

Note: Grant funds may not be used for school construction.

Note: The term *charter school* has the meaning given such term in section 5210(1) of ESEA.

Note: Applications that do not propose to use grant funds to provide students selected to participate in the program with transportation services or the cost of transportation to or from the public elementary or secondary schools, including charter schools, the students choose to attend under the program must include a detailed explanation of how such transportation services or costs will be paid.

Application Requirements: An application submitted to the Secretary must include the following:

a. A description of the program for which the eligible entity seeks funds and the goals for the program.

b. A description of how and when parents of students who are to be served by the program will be given prompt notification of: (1) The existence of the program, (2) the program's availability, and (3) a clear explanation of how the program will operate.

c. A description of how students will be selected for the program.

Note: Students must be selected on the basis of lottery if more students apply to participate in the program than can be accommodated.

d. A description of how the program will be coordinated with, and will complement and enhance, the applicant's other related Federal and non-Federal projects.

e. If the program is to be carried out by a partnership, the name of each partner, a description of the partners' responsibilities, and a written partnership agreement that meets the requirements of 34 CFR 75.128(b).

f. Among the application requirements, an assurance that the applicant will collect information to meet the requirements of 34 CFR 75.590.

Note: Section 75.590 requires the recipient of an award to evaluate at least annually its progress in achieving the objectives in its approved application, the effectiveness of the project in meeting the purposes of the program, and the program's effects on participants being served by the project.

Program Authority: 20 U.S.C. 7225–7225g.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities for discretionary grant programs published in the **Federal Register** on October 11, 2006 (71 FR 60046).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $26,278,000 for this program for FY 2007. 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 before the end of the current fiscal year, if Congress appropriates funds for this program.

Estimated Range of Awards: $700,000–$3,000,000 per year.

Estimated Average Size of Awards: $2,000,000 per year.

Estimated Number of Awards: 10–15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:*

(a) One or more SEAs;

(b) One or more LEAs;

(c) One or more SEAs in partnership with one more LEAs or other public, for-profit, or non-profit entities; or

(d) One or more LEAs in partnership with one or more public, for-profit, or non-profit entities.

Note: For regulations governing partnership applications, see 34 CFR 75.127 through 75.129.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.361A.

You may also obtain the application package for the program via the Internet at the following address: *http://www.ed.gov/programs/voluntarypublicschoolchoice/applicant.html*.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in section

VII. Agency Contact 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.

Notice of Intent to Apply: The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of applicants that intend to apply for funding under this program. Therefore, the Secretary strongly encourages each potential applicant to notify the Department with a short e-mail indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. This e-mail notification should be sent to Iris A. Lane at: *vpsc@ed.gov*. Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The program narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the program narrative section that addresses the selection criteria to the equivalent of no more than 75 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be within the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, and graphs may be single spaced.
- Use one or more of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman and Arial Narrow) will be rejected.
- Use not less than 12-point font.

The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED 524); and Part IV, the assurances, certifications and related information. The page limit also does not apply to a table of contents, an abstract, resumes, or letters of support. However, you must include all of the application narrative in Part III. You must include your complete response to the selection criteria in the program narrative.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: February 1, 2007.

Deadline for Notice of Intent to Apply: February 26, 2007.

Deadline for Transmittal of Applications: April 2, 2007.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Deadline for Intergovernmental Review: June 1, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements.* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Voluntary Public School Choice Program, CFDA Number 84.361A must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-

mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Voluntary Public School Choice Program at *http://www.Grants.gov*. You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.361, not 84.361A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Iris A. Lane, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W219, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: CFDA Number (84.361A), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center, Stop 4260, Attention: CFDA Number (84.361A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.361A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260. The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and sections 5243 and 5244 of the ESEA. The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion. The maximum number of points an application may earn based on the competitive preference priorities and the selection criteria is 160 points. The criteria are as follows:

(a) *Significance (up to 10 points).* The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers the following factors:

(1) The likelihood that the proposed project will result in system change or improvement.

(2) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(b) *Quality of the project design (up to 30 points).* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the proposed project encourages parental involvement and ensures that parents have comprehensive information about their educational choices.

(2) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(3) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(c) *Quality of project services (up to 20 points).* The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(2) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(d) *Quality of the management plan (up to 20 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including whether it includes clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(e) *Quality of the project evaluation (up to 20 points).* The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

Note: A strong evaluation plan should be included in the application narrative and should be used, as appropriate, to shape the development of the project from the beginning of the grant period. The plan should include benchmarks to monitor progress toward specific project objectives and also outcome measures to assess the impact on teaching and learning or other important outcomes for project participants. More specifically, the plan should identify the individual and/or organization that has agreed to serve as evaluator for the project and describe the qualifications of that evaluator. The plan should describe the evaluation design, indicating: (1) What types of data will be collected (individual-level and school-level data); (2) when various types of data will be collected; (3) what methods will be used; (4) what instruments will be developed and when; (5) how the data will be analyzed; (6) when reports of results and outcomes will be available; and (7) how the applicant will use the information collected through the evaluation to monitor progress of the funded project and to provide accountability information both about success at the initial site and effective strategies for replication in other settings. Applicants are encouraged to devote an appropriate level of resources to project evaluation.

2. *Review and Selection Process:* The Secretary will select an application for funding in rank-order, based on the application's total score for the selection criteria and priorities.

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 also notify you informally.

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 specified by the Secretary in 34 CFR 75.118. For specific requirements on grantee reporting, please go to *http://www/ed/gov/fund/grant/apply/appforms.html.*

4. *Performance Measures:* The program goal is to assist States and local school districts in creating, expanding, and implementing a public school choice program. The Secretary has established three performance indicators: (1) The number of students who have the option of attending participating VPSC schools selected by their parents; (2) The percentage of students participating at VPSC sites who exercise school choice by changing schools; and, (3) The percentage of participating students whose achievement increases in mathematics and reading. All grantees will be expected to submit an annual performance report documenting their contribution in assisting the Department in measuring the performance of the program against these indicators.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Iris A. Lane, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W219, Washington, DC 20202–5970. Telephone: (202) 260–1999 or by e-mail: *vpsc@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: January 26, 2007.

Morgan S. Brown,

Deputy Assistant Secretary for Innovation and Improvement.

[FR Doc. E7–1539 Filed 1–31–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0853; FRL–8102–6]

Agency Information Collection Activities; Proposed Collection; Comment Request; Reporting and Recordkeeping for Asbestos Abatement Worker Protection; EPA ICR No. 1246.10, OMB Control No. 2070–0072

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Reporting and Recordkeeping for Asbestos Abatement Worker Protection'' and identified by EPA ICR No. 1246.10 and OMB Control No. 2070–0072, is scheduled to expire on October 31, 2007. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before April 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0853, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2006–0853. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0853. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' 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 public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

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

For technical information contact: Robert Courtnage, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1081; fax number: (202) 566–0473; e-mail address: *courtnage.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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 estimates 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.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Information Collection Activity or ICR Does this Action Apply to?

Affected entities: Entities potentially affected by this action include states and local government employers in the 26 states, the District of Columbia and certain other U.S. territories that have employees engaged in asbestos-related construction, custodial, and brake and clutch repair activities without Occupational Safety and Health Administration (OSHA)-approved state plans.

Title: Reporting and Recordkeeping for Asbestos Abatement Worker Protection.

ICR numbers: EPA ICR No. 1246.10, OMB Control No. 2070–0072.

ICR status: This ICR is currently scheduled to expire on October 31, 2007. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA's asbestos worker protection rule is designed to provide occupational exposure protection to state and local government employees who are engaged in asbestos abatement activities in states that do not have state plans approved by OSHA. The rule provides protection for public employees not covered by the OSHA standard from the adverse health effects associated with occupational exposure to asbestos. Specifically, the rule requires state and local governments to monitor employee exposure to asbestos, take action to reduce exposure to asbestos, monitor employee health, and train employees about asbestos hazards.

The rule includes a number of information reporting and recordkeeping requirements. State and local government agencies are required to provide employees with information about exposures to asbestos and the associated health effects. The rule also requires state and local governments to notify EPA before commencing any asbestos abatement project. State and local governments must maintain medical surveillance and monitoring records and training records on their employees, must establish a set of written procedures for respirator programs and must maintain procedures and records of respirator fit tests. EPA will use the information to monitor compliance with the asbestos worker protection rule. This request addresses these reporting and recordkeeping requirements.

Responses to the collection of information are mandatory (see 40 CFR part 763, subpart G). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 15.95 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 25,312.

Frequency of response: On occasion; includes third-party notification.

Estimated total average number of responses for each respondent: 50.

Estimated total annual burden hours: 403,751 hours.

Estimated total annual costs: $14,994,566. This includes an estimated burden cost of $14,994,566 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are There Changes in the Estimates from the Last Approval?

There is a decrease of 8,492 hours (from 412,243 hours to 403,751 hours) in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease principally reflects EPA's correction of the training burden for Class I and Class II competent persons that results from correctly annualizing the 40-hour training over five years rather than over a three-year period. While some changes were made in the calculations of the numbers of initial and periodic medical questionnaires that construction employees and supervisors complete, the net result of those changes has a very slight impact on the total annual burden hour estimate. This change is an adjustment.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: January 22, 2007.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E7–1622 Filed 1–31–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE &TIME: Tuesday February 6, 2007 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, *Telephone:* (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–463 Filed 1–30–07; 2:40 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Background:

Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on

Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e–mail to *mmenchik@omb.eop.gov*.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: The Government Securities Dealers Reports: Weekly Report of Dealer Positions (FR 2004A), Weekly Report of Cumulative Dealer Transactions (FR 2004B), Weekly Report of Dealer Financing and Fails (FR 2004C), Weekly Report of Specific Issues (FR 2004SI), Daily Report of Specific Issues (FR 2004SD), and Daily Report of Dealer Activity in Treasury Financing (FR 2004WI).

Agency form number: FR 2004.

OMB Control number: 7100–0003.

Frequency: Weekly, Daily.

Reporters: Primary dealers in the U.S. Government securities market.

Annual reporting hours: FR 2004A, 1,716 hours; FR 2004B, 2,288 hours; FR 2004C, 1,430 hours; FR 2004SI, 2,288 hours; FR 2004SD, 1,100 hours; FR 2004WI, 3,520 hours.Estimated average hours per response: FR 2004A, 1.5 hours; FR 2004B, 2.0 hours; FR 2004C, 1.25 hours; FR 2004SI, 2.0 hours; FR 2004SD, 2.0 hours; FR 2004WI, 1.0 hour.

Number of respondents: 22.

General description of report: This information collection is authorized pursuant to sections 11(a)(2), 14, and 19(c) of the Federal Reserve Act [12 U.S.C. 248(a)(2), 353–359, and 461(c)] and is required to obtain or retain a benefit. Individual respondent data are regarded as confidential under the Freedom of Information Act [5 U.S.C. 552(b)(4) and (b)(8)].

Abstract: The FR 2004A collects weekly data on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects cumulative weekly data on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects weekly data on the amounts of dealer financing and fails. The FR 2004SI collects weekly data on outright, financing, and fails positions in current or on–the–run issues. Under certain circumstances this information is also collected on a daily basis on the FR 2004SD for on–the–run and off–the–run securities. The FR 2004WI collects daily data on positions in to–be–issued Treasury coupon securities, mainly the trading on a when–issued delivery basis. Data from the FR 2004SI, SD and WI are available to the Interagency Working Group (IAWG), which includes the Department of the Treasury, the Federal Reserve Bank of New York, the Federal Reserve Board, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

Current Actions: On November 16, 2006, the Federal Reserve published a notice in the **Federal Register** (71 FR 66780) requesting public comment for 60 days on the extension, with revision, of the Government Securities Dealers Reports. The comment period for this notice expired on January 16, 2007. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, January 29, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–1650; Filed 1–31–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, 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 information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before April 2, 2007.

ADDRESSES: You may submit comments, identified by FR 2051a,b (OMB No.7100–0012); FR MSD–4 (OMB No.7100–0100); FR MSD–5 (OMB No.7100–0101); or FR G–FIN and FR G–FINW OMB No.7100–0224) by any of the following methods:

- Agency Web Site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E–mail: *regs.comments@federalreserve.gov*.

Include docket number in the subject line of the message.

• FAX: 202/452–3819 or 202/452–3102.

• Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, N.W.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission, supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following report:

Report title: Report of Money Market Mutual Fund Assets

Agency form number: FR 2051a (formerly FR 2051a,b)

OMB control number: 7100–0012

Frequency: Weekly

Reporters: Money Market Mutual Funds

Annual reporting hours: 5,200 hours

Estimated average hours per response: 3 minutes

Number of respondents: 2,000

General description of report: This information collection is voluntary (12 U.S.C. 353 et. seq.) and is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstract: The weekly FR 2051a collects data on total shares outstanding for approximately 2,000 money market mutual funds. The monthly FR 2051b collects data on total net assets and portfolio holdings for approximately 600 funds. The data are used to construct the monetary aggregates and for the analysis of current money market conditions and banking developments.

Current Actions: The Federal Reserve proposes to discontinue the monthly FR 2051b. Prior to the discontinuance of the M3 monetary aggregate in March 2006, the monthly data were used in the construction of the M3 aggregate. Due to the M3 discontinuance, data from the FR 2051b are no longer necessary. The discontinuance of the FR 2051b would reduce the annual burden by 1,440 hours to 5,200 hours.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer; Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer

Agency form number: FR MSD–4, FR MSD–5

OMB control number: 7100–0100, 7100–0101

Frequency: On occasion

Reporters: State member banks and foreign dealer banks engaging in activities as municipal securities dealers.

Annual reporting hours: FR MSD–4, 76 hours; FR MSD–5, 30 hours

Estimated average hours per response: FR MSD–4, 1 hour; FR MSD–5, 0.25 hours

Number of respondents: FR MSD–4, 76; FR MSD–5, 119

General description of report: These information collections are mandatory for state member banks (12 U.S.C. § 248(a)(1)) and for foreign bank branches and agencies (12 U.S.C. 3105(c)(2)) and are given confidential treatment (5 U.S.C. § 552(b)(6)).

Abstract: The FR MSD–4 collects information, such as personal history and professional qualifications, on an employee whom the bank wishes to assume the duties of a municipal securities principal or representative. The FR MSD–5 collects the date of, and reason for, termination of such an employee.

2. Report title: Notice By Financial Institutions of Government Securities Broker or Government Securities Dealer Activities; Notice By Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer

Agency form number: FR G–FIN, FR G–FINW

OMB control number: 7100–0224

Frequency: On occasion

Reporters: State member banks, foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, and Edge corporations.

Annual reporting hours: FR G–FIN, 26 hours; FR G–FINW, 1 hour

Estimated average hours per response: FR G–FIN, 1 hour; FR G–FINW, 0.25 hours

Number of respondents: FR G–FIN, 26; FR G–FINW, 5

General description of report: These information collections are mandatory (15 U.S.C. 78o–5(a)(1)(B)) and are not given confidential treatment.

Abstract: The Government Securities Act of 1986 (the Act) requires financial institutions to notify their appropriate regulatory authority of their intent to engage in government securities broker or dealer activity, to amend information submitted previously, and to record their termination of such activity. The Federal Reserve Board uses the information in its supervisory capacity to measure compliance with the Act.

Board of Governors of the Federal Reserve System, January 29, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–1651 Filed 1–31–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

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 February 26, 2007.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Assabet Valley Bancorp, Hudson, Massachusetts; to acquire 100 percent of the voting shares, and thereby merge with Westborough Bancorp, MHC, Westborough Financial Services, Inc. and the Westborough Bank, all in Westborough, Massachusetts.

Board of Governors of the Federal Reserve System, January 29, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–1636 Filed 1–31–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7-243) published on pages 1332 and 1333 of the issue for Thursday, January 11, 2007.

Under the Federal Reserve Bank of Chicago heading, the entry for Grant Count State Bancshares, Inc. Employee Stock Ownership Plan, Swayzee, Indiana, is revised to read as follows:

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Grant County State Bancshares, Inc. Employee Stock Ownership Plan, Swayzee, Indiana, to retain control of Grant County State Bancshares, Inc., Swayzee, Indiana, as a result of a stock redemption, and thereby indirectly retain control of Grant County State Bank, Swayzee, Indiana.

Comments on this application must be received by February 5, 2007.

Board of Governors of the Federal Reserve System, January 29, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–1637 Filed 1–31–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Pandemic Countermeasures; Declaration Under the Public Readiness and Emergency Preparedness Act

January 26, 2007.

AGENCY: Office of the Secretary (OS), Department of Health and Human Services (HHS).

ACTION: Notice.

Authority: 42 U.S.C. 247d–6d.

SUMMARY: Declaration pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d-6d) to provide targeted liability protections for pandemic countermeasures based on a credible risk that an avian influenza virus spreads and evolves into a strain capable of causing a pandemic of human influenza.

DATES: This notice and the attached declaration are effective as of December 1, 2006.

FOR FURTHER INFORMATION CONTACT: RADM W.C. Vanderwagen, Assistant Secretary for Public Health Emergency Preparedness, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Highly pathogenic avian influenza A (H5N1) viruses have spread by infected migratory birds and exports of live poultry from Asia through Europe and Africa since 2004, and could spread into North America in 2006 or later, and have caused disease in humans with an associated high case fatality upon infection with this virus. Section 319F–3 of the Public Health Service Act (42 U.S.C. 247d-6d), which was established by the Public Readiness and Emergency Preparedness Act of 2005, is intended to alleviate certain liability concerns associated with pandemic countermeasures, and, therefore, ensure that the countermeasures are available and can be administered in the event an avian influenza virus spreads and evolves into a strain capable of causing a pandemic of human influenza.

HHS Secretary's Declaration for the Use of the Public Readiness and Emergency Preparedness Act for H5N1 Vaccine

Whereas highly pathogenic avian influenza A (H5N1) viruses have spread by infected migratory birds and exports of live poultry from Asia through Europe and Africa since 2004, and could spread into North America in 2006 or later, and have caused disease in humans with an associated high case fatality upon infection with this virus;

Whereas an H5N1 avian influenza virus might evolve into a strain capable of causing a pandemic of human influenza;

Whereas, in accordance with section 319F–3(b)(6) of the Public Health Service Act (42 U.S.C. 247d-6d(b)) (''the Act''), I have considered the desirability of encouraging the design, development, clinical testing or investigation, manufacturing and product formulation, labeling, distribution, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing, and use of medical countermeasures with respect to the category of disease and population described in sections II and IV below, and have found it desirable to encourage such activities for the Covered Countermeasures;

Therefore, pursuant to section 319F–3(b) of the Act, I have determined there is a credible risk that the spread of avian influenza viruses and resulting disease could in the future constitute a public health emergency.

I. Covered Countermeasures (as Required by Section 319F–3(b)(1) of the Act)

Covered countermeasures are defined at section 319F–3(i) of the Act.

At this time, and in accordance with the provisions contained herein, I am recommending the preparation of virus reference strains; the manufacturing, testing, development, and distribution; and, with respect to the category of disease and population described in sections II and IV below, the administration and usage of the pandemic countermeasure influenza A (H5N1) vaccine. The immunity specified in section 319F–3(a) of the Act shall be in effect with respect to those activities, pursuant to any means of distribution. The immunity specified in section 319F–3(a) of the Act shall only be in effect with respect to present (see Appendix I) and any future U.S.

Government grants, cooperative agreements, and contracts for pandemic countermeasure influenza A (H5N1) vaccine used and administered in accordance with this declaration, irrespective of the means of distribution.

This declaration shall apply to all product administered during the effective period of the declaration in the United States by program planners and qualified persons covered by this declaration, pursuant to any means of distribution.

This declaration shall subsequently refer to the countermeasures identified above as ''Covered Countermeasures.''

II. Category of Disease (as Required by Section 319F–3(b)(2)(A) of the Act)

The category of disease for which I am recommending the administration or use of the Covered Countermeasures is the threat of or actual human influenza that results from the infection of humans with highly pathogenic avian influenza A (H5N1) virus following exposure to the virus.

III. Effective Time Period (as Required by Section 319F–3(b)(2)(B) of the Act)

The effective period of time of this Declaration commences on December 1, 2006 and extends through February 28, 2010.

IV. Population (as Required by Section 319F–3(b)(2)(C) of the Act)

Section 319F–3(a)(4)(A) confers immunity to manufacturers and distributors of the Covered Countermeasure, regardless of the defined population.

Section 319F–3(a)(3)(C)(i) confers immunity to covered persons who could be program planners or qualified persons with respect to the Covered Countermeasure only if a member of the population specified in the declaration administers or uses the Covered Countermeasure and is in or connected to the geographic location specified in this declaration, or the program planner or qualified person reasonably could have believed that these conditions were met.

The populations specified in this Declaration are the following: (1) All persons who use a Covered Countermeasure or to whom such a Covered Countermeasure is administered as an Investigational New Drug in a human clinical trial conducted directly by the Federal Government, or pursuant to a contract, grant or cooperative agreement with the Federal Government; (2) all persons who use a Covered Countermeasure or to whom such a Countermeasure is administered in a pre-pandemic phase, as defined below; and/or (3) all persons who use a Covered Countermeasure, or to whom such a Covered Countermeasure is administered in a pandemic phase, as defined below.

V. Geographic Area (as Required by Section 319F–3(b)(2)(D) of the Act)

Section 319F–3(a) applies to the administration and use of a Covered Countermeasure without geographic limitation.

VI. Other Qualified Persons (as Required by Section 319F–3(i)(8)(B) of the Act)

With regard to the administration or use of a Covered Countermeasure, Section 319F–3(i)(8)(A) of the Act defines the term ''qualified person'' as a licensed individual who is authorized to prescribe, administer, or dispense the countermeasure under the law of the State in which such Covered Countermeasure was prescribed, administered or dispensed. Additional persons who are qualified persons pursuant to section 319F–3(i)(8)(B) are the following: None.

VII. Additional Time Periods of Coverage After Expiration of Declaration (as Required by Section 319F–3(b)(3)(B) of the Act)

A. I have determined that, upon expiration of the time period specified in Section III above, an additional twelve (12) months is a reasonable period to allow for the manufacturer to arrange for disposition of the Covered Countermeasure, including the return of such product to the manufacturer, and for covered persons to take such other actions as are appropriate to limit the administration or use of the Covered Countermeasure, and the liability protection of section 319F–3(a) of the Act shall extend for that period.

B. The Federal Government shall purchase the entire production of Covered Countermeasures under the contracts specifically listed by contract number in section I for the stockpile under section 319F–2 of the Act, and shall be subject to the time-period extension of section 319F–3(b)(3)(C). Production under future contracts for the same vaccine will also be subject to the time-period extension of section 319F–3(b)(3)(C).

VIII. Amendments

This Declaration has not previously been amended. Any future amendment to this Declaration will be published in the **Federal Register**, pursuant to section 319F–2(b)(4) of the Act.

IX. Definitions

For the purposes of this declaration, ''pre-pandemic phase'' means the following stages, as defined in the National Strategy for Pandemic Influenza: Implementation Plan (Homeland Security Council, May 2006): (0) New Domestic Animal Outbreak in At-Risk Country; (1) Suspected Human Outbreak Overseas; (2) Confirmed Human Outbreak Overseas; and (3) Widespread Human Outbreaks in Multiple Locations Overseas.

For the purposes of this declaration, ''pandemic phase'' means the following stages, as defined in the National Strategy for Pandemic Influenza: Implementation Plan (Homeland Security Council, May 2006): (4) First Human Case in North America; and (5) Spread Throughout United States.

Dated: January 26, 2007.

Michael O. Leavitt,

Secretary of Health and Human Services.

Appendix I

LIST OF U.S. GOVERNMENT CONTRACTS—COVERED H5N1 VACCINE CONTRACTS

[January 26, 2007]

1. HHSN266200400031C
2. HHSN266200400032C
3. HHSN266200300039C
4. HHSN266200400045C
5. HHSN266200205459C
6. HHSN266200205460C
7. HHSN266200205461C
8. HHSN266200205462C
9. HHSN266200205463C
10. HHSN266200205464C
11. HHSN266200205465C
12. HHSN266199905357C
13. HHSN266200300068C
14. HHSN266200005413C
15. HHSO100200600021C (formerly 200200409981)
16. HHSO100200500004C
17. HHSO100200500005I
18. HHSO100200700026I
19. HHSO100200700027I
20. HHSO100200700028I
21. HHSO100200600010C
22. HHSO100200600011C
23. HHSO100200600012C
24. HHSO100200600013C
25. HHSO100200600014C
26. HHSO100200600022C (formerly 200200511758)
27. HHSO100200600023C (formerly 200200410431)
28. CRADA No. AI–0155 NIAID/MedImmune
29. HHSO100200700029C
30. HHSO100200700030C
31. HHSO100200700031C

[FR Doc. E7–1635 Filed 1–31–07; 8:45 am]

BILLING CODE 4150–26–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Annual Survey of Refugees.

OMB No.: 0970–0033.

Description: The Annual Survey of Refugees collects information on the social and economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the United States in the five years prior to the date of the survey. The survey focuses on the refugees' training, labor force participation, and welfare utilization rates. Data are segmented by region of origin, State of resettlement, and number of months since arrival. From the responses, the Office of Refugee Resettlement reports on the economic adjustment of refugees to the American economy. These data are used by Congress in its annual deliberations of refugee admissions and funding and by program managers in formulating policies for the future direction of the Refugee Resettlement Program.

Respondents: Refugees, entrants, Amerasians, and Havana parolees.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–9	2,000	1	.666666	1,333

Estimated Total Annual Burden Hours: 1,333.

In compliance with the requirements of Section 3506(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 of 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: January 25, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–430 Filed 1–31–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Compassion Capital Fund Evaluation—Indicators of Organizational Capacity Among Targeted Capacity Building Program Grantees.

OMB No.: New Collection.

Description: This information collection activity is for a study of grantees under the Targeted Capacity Building Program that is one component of the evaluation of the Compassion Capital Fund (CCF) program. The information collection will be through mailed surveys to be completed by selected faith-based and community organizations that received Targeted Capacity Building grants under the CCF program.

The overall evaluation includes multiple components that will examine indicators, outcomes and effectiveness of the CCF in meeting its objective of improving the capacity of faith-based and community organizations. This component of the evaluation will involve approximately 309 faith-based and community organizations. Information will be sought from these organizations to assess change and improvement in various areas of organizational capacity resulting from receipt of a Targeted Capacity Building grant.

Respondents: The respondents will be selected faith-based and community organizations that received a Targeted Capacity Building grant in a prior year. The surveys will be self-administered.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Indicators of Organizational Capacity Survey	309	1	.499	154

Estimated Total Annual Burden Hours: 154.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project. *FAX:* 202–395–6974. *Attn:* Desk Officer for ACF.

Dated: January 25, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–431 Filed 1–31–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0239]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Infectious Disease in Xenotransplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Infectious Disease in Xenotransplantation'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 31, 2006 (71 FR 63768), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0456. The approval expires on January 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: January 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–1550 Filed 1–31–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0408]

Regulatory Site Visit Training Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA's) Center for Biologics Evaluation and Research (CBER) is reannouncing the invitation for participation in its Regulatory Site Visit Training Program (RSVP). This training program is intended to give CBER regulatory review, compliance, and other relevant staff an opportunity to visit biologics facilities. These visits are intended to allow CBER staff to directly observe routine manufacturing practices and to give CBER staff a better understanding of the biologics industry, including its challenges and operations. The purpose of this notice is to invite biologics facilities to contact CBER for more information if they are interested in participating in this program.

DATES: Submit written or electronic requests for participation in this program by March 5, 2007. The request should include a description of your facility relative to products regulated by CBER. Please specify the physical address of the site you are offering.

ADDRESSES: If your biologics facility is interested in offering a site visit or learning more about this training opportunity for CBER staff, you should submit a request to participate in the program to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic requests to *http://www.fda.gov/dockets/ecomments*.

If your biologics facility responded to the previous RSVP notice announced in the **Federal Register** of April 11, 2006 (71 FR 18340), and your facility wishes to continue to be considered for this year's program, please notify CBER of your continued interest by sending an e-mail to *matt@cber.fda.gov*.

FOR FURTHER INFORMATION CONTACT: Lonnie Warren-Myers, Division of Manufacturers Assistance and Training, Center for Biologics Evaluation and Research (HFM–49), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–2000, FAX: 301–827–3079, e-mail: *matt@cber.fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

CBER regulates certain biological products including blood and blood products, vaccines, and cellular, tissue and gene therapies. CBER is committed to advancing the public health through innovative activities that help ensure the safety, effectiveness, and timely delivery of biological products to patients. To support this primary goal, CBER has initiated various training and development programs to promote high performance of its compliance staff, regulatory review staff, and other relevant staff. CBER seeks to continuously enhance and update review efficiency and quality, and the quality of its regulatory efforts and interactions, by providing CBER staff with a better understanding of the biologics industry and its operations. Further, CBER seeks to improve: (1) Its understanding of current industry practices, and regulatory impacts and needs; and (2) communication between CBER staff and industry. CBER initiated its RSVP in 2005, and through these annual notices, is requesting those firms that have previously applied and are still interested in participating, to reaffirm their interest, as well as encouraging new interested parties to apply.

II. RSVP

A. Regulatory Site Visits

In this program, over a period of time to be agreed upon with the facility, small groups of CBER staff may observe operations of biologics establishments, including, for example, blood and tissue establishments. The visits may include packaging facilities, quality control and pathology/toxicology laboratories, and regulatory affairs operations. These visits, or any part of the program, are not intended as a mechanism to inspect, assess, judge, or perform a regulatory function, but are meant to improve mutual understanding and to provide an avenue for open dialogue between the biologics industry and CBER.

B. Site Selection

All travel expenses associated with the site visits will be the responsibility of CBER; therefore, selection of potential facilities will be based on the coordination of CBER's priorities for staff training as well as the limited available resources for this program. In addition to logistical and other resource factors to consider, a key element of site selection is a successful compliance record with CBER or another agency for which we have a memorandum of understanding.

Dated: January 22, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–1576 Filed 1–31–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

University of Arkansas/Food and Drug Administration Food Labeling Workshop; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs, Southwest Regional Small Business Representative (SWR SBR) Program, in collaboration with The University of Arkansas (UA), is announcing a public workshop entitled ''UA/FDA Food Labeling Workshop.'' This public workshop is intended to provide information about FDA food labeling regulations and other related subjects to the regulated industry, particularly small businesses and startups.

Date and Time: This public workshop will be held on April 10, 2007, from 8 a.m. to 5 p.m., and on April 11, 2007, from 8 a.m. to 4 p.m.

Location: The public workshop will be held at the Continuing Education Center, 2 East Center St., Fayetteville, AR (located downtown).

Contact: David Arvelo, Small Business Representative, Food and Drug Administration, Southwest Regional Office, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–4952, FAX: 214–253–4970, or e-mail: *david.arvelo@fda.hhs.gov*.

For information on accommodation options, contact Steven C. Seideman, 2650 North Young Ave., Institute of Food Science & Engineering, University of Arkansas, Fayetteville, AR 72704, 479–575–4221, FAX: 479–575–2165, or e-mail: *seideman@uark.edu*.

Registration: You are encouraged to register by March 23, 2007. The University of Arkansas has a $150 registration fee to cover the cost of facilities, materials, speakers, and breaks. Seats are limited; please submit your registration as soon as possible. Course space will be filled in order of receipt of registration. Those accepted into the course will receive confirmation. Registration will close after the course is filled. Registration at the site is not guaranteed but may be possible on a space available basis on the day of the public workshop beginning at 8 a.m. The cost of registration at the site is $200 payable to: ''The University of Arkansas.'' If you need special accommodations due to a disability, please contact Steven C. Seideman (see *Contact*) at least 7 days in advance.

Registration Form Instructions: To register, please complete the following form and submit along with a check or money order for $150 payable to the ''The University of Arkansas.'' Mail to: Institute of Food Science & Engineering, University of Arkansas, 2650 North Young Ave., Fayetteville, AR 72704.

UNIVERSITY OF ARKANSAS/FOOD AND DRUG ADMINISTRATION FOOD LABELING WORKSHOP REGISTRATION FORM

Name: _____

Affiliation: _____

Mailing Address: _____

City/State/Zip Code: _____

Phone: _____

Fax: _____

E-mail: _____

Special Accommodations Required: _____

Transcripts: Transcripts of the public workshop will not be available due to the format of this workshop. Course handouts may be requested at cost through 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 workshop at a cost of 10 cents per page.

SUPPLEMENTARY INFORMATION: This public workshop is being held in response to the large volume of food labeling inquiries from small food manufacturers and startups originating from the area covered by the FDA Dallas District Office. The SWR SBR presents these workshops to help achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which include working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. This is consistent with the purposes of the SBR Program, which are in part to respond to industry inquiries, develop educational materials, sponsor workshops and conferences to provide firms, particularly small businesses, with firsthand working knowledge of FDA's requirements and compliance policies. This workshop is also consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), as outreach activities by government agencies to small businesses.

The goal of this public workshop is to present information that will enable manufacturers and regulated industry to better comply with labeling requirements, especially in light of growing concerns about obesity and food allergens. Information presented will be based on agency position as

articulated through regulation, compliance policy guides, and information previously made available to the public. Topics to be discussed at the workshop include: (1) Mandatory label elements, (2) nutrition labeling requirements, (3) health and nutrition claims, (4) the Food Allergen Labeling and Consumer Protection Act of 2004, and (5) special labeling issues such as exemptions. FDA expects that participation in this public workshop will provide regulated industry with greater understanding of the regulatory and policy perspectives on food labeling and increase voluntary compliance.

Dated: January 25, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–1570 Filed 1–31–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0025]

Guidance for Industry; Class II Special Controls Guidance Document: Cord Blood Processing System and Storage Container; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Class II Special Controls Guidance Document: Cord Blood Processing System and Storage Container.'' The guidance document describes a means by which a cord blood processing system and storage container may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying a cord blood processing system and storage container into class II (special controls). This guidance document is immediately in effect as the special control for this device, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Denise Sanchez, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying a cord blood processing system and storage container into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This notice announces the availability of the guidance document that will serve as the special control for this device.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device into class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such a classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible or appropriate to allow for public participation before issuing this guidance as a final guidance document. Thus, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of the Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the agency's current thinking on a cord blood processing system and storage container. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E (regulations governing premarket notification submissions) have been approved under OMB Control No. 0910–0120.

IV. Comments

Interested persons may, at any time, submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the guidance. 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 the brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: January 24, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–1568 Filed 1–31–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The REDS-II Donor Iron Study: Predicting Hemoglobin Deferral and Development of Iron Depletion in Blood Donors

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung , and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 28, 2006, pages 50925–50926 and allowed 60-days for public comment. No comments were received in response to this notice. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a current valid OMB control number.

Proposed Collection: Title: The REDS-II Donor Iron Study: Predicting Hemoglobin Deferral and Development of Iron Depletion in Blood Donors. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* Although the overall health significance of iron depletion in blood donors is uncertain, iron depletion leading to iron deficient erythropoiesis and lowered hemoglobin levels results in donor deferral and, occasionally, in mild iron deficiency anemia. Hemoglobin deferrals represent more than half of all donor deferral, deferring 16% of women. Several cross sectional studies of blood donors, using older measures of iron status in blood donors have indicated that female sex, frequent donation and not taking iron supplements are predictors of iron depletion. However, none of these studies have included racial/ethnic, anthropomorphic, or behavioral factors and none have evaluated the impact of newly discovered iron protein polymorphisms. The REDS-II Donor Iron Study is a longitudinal study of iron status in two cohorts of blood donors: a first time/reactivated donor cohort in which baseline iron and hemoglobin status can be assessed without the influence of previous donations, and a frequent donor cohort, where the cumulative effect of additional frequent blood donations can be assessed. Each cohort's donors will donate blood and provide evaluation samples during the study period. We also propose to assess the baseline status of a group of first-time donors who are deferred for low hemoglobin on their first visit.

The primary goal of the study is to evaluate the effects of blood donation intensity on iron and hemoglobin status and assess how these are modified as a function of baseline iron/hemoglobin measures, demographic factors, and reproductive and behavioral factors. Hemoglobin levels, a panel of iron protein, red cell and reticulocyte indices will be measured at baseline and at a final follow-up visit 15–24 months after the baseline visit. A DNA sample will be obtained once at the baseline visit to assess three key iron protein polymorphisms. Donors will also complete a self-administered survey assessing past blood donation, smoking history, use of vitamin/mineral supplements, iron supplements, aspirin, frequency of heme rich food intake, and, for females, menstrual status and pregnancy history at these two time points. This study aims to identify the optimal laboratory measures that would predict the development of iron depletion, hemoglobin deferral, and/or iron deficient hemoglobin deferral in active whole blood and double red cell donors at subsequent blood donations. The data collected will help evaluate hemoglobin distributions in the blood donor population (eligible and deferred donors) and compare them with NHANES data. Other secondary objectives include elucidating key genetic influences on hemoglobin levels and iron status in a donor population as a function of donation history; and establishing a serum and DNA archive to evaluate the potential utility of future iron studies and genetic polymorphisms.

This study will develop better predictive models for iron depletion and hemoglobin deferral (with or without iron deficiency) in blood donors; allow for the development of improved donor screening strategies and open the possibility for customized donation frequency guidelines for individuals or classes of donors; provide important baseline information for the design of targeted iron supplementation strategies in blood donors, and improved counseling messages to blood donors regarding diet or supplements; and by elucidating the effect of genetic iron protein polymorphisms on the development of iron depletion, enhance the understanding of the role of these proteins in states of iron stress, using frequent blood donation as a model. *Frequency of Response:* Twice. *Affected Public:* Individuals. *Type of Respondents:* Adult Blood Donors. The annual reporting burden is a follows: *Estimated Number of Respondents:* Baseline visit: 4,290, Follow up Visit: 2,040; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* Baseline Visit: 0.12, Follow up Visit: 0.1; and *Estimated Total Annual Burden Hours Requested:* Baseline visit: 515, Follow up Visit: 204. The annualized cost to respondents is estimated at: Baseline Visit: $9,270, Follow up Visit: $3,672 (based on $18 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE A.12.—ESTIMATES OF HOUR BURDEN AND ANNUALIZED COST TO RESPONDENTS

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Hourly wage rate ($)	Estimated total annual burden hours requested
Blood donors at Baseline Visit	4,290	1	0.12	18	515
Blood donors at Follow-up Visit	2,040	1	0.1	18	204
Total					719

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary

for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Suite 361, 6700 Rockledge Drive, Bethesda, MD 20892, or call non-toll free number 301–435–0075, or e-mail your request, including your address to *nemog@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received *within 30 days* of the date of this publication.

Dated: January 25, 2007.

George Nemo,

Project Officer, NHLBI National Institutes of Health.

[FR Doc. E7–1587 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; C.O.B.R.E SEP II.

Date: February 15, 2007.

Time: 6 p.m. to 7 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: Mamta Gautam-Basak, PhD, Scientific Review Administrator, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy Blvd., 1 Dem. Plaza, Room 1066, Bethesda, MD 20892, 301–435–0965, *GautamM@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Comparative Medicine Resources.

Date: February 21, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Steven Birken, PhD, Senior Research Scientist, Office of Review, National Center for Research Resources, One Democracy Plaza, Room 1078, 6701 Democracy Blvd., MSC–4874, Bethesda, MD 20892, 301–435–0815, *birkens@mail.nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel; SEPA 07' Review.

Date: March 7, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Bonnie Dunn, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Dem. Blvd., Dem. 1, Room 1074, MSC 4874, Bethesda, MD 20892–4874, 301–435–0824, *dunnbo@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS).

Dated: January 26, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–451 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: February 27, 2007.

Closed: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Open: 9:30 a.m. to 5 p.m.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD, NIAAA Health Disparities Update, Biennial Report on Compliance with NIH Inclusion Guidelines, Extramural Program Highlights, and other business of the Council.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Donna Brooks, Asst. Director for Administration, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–435–2135, *brooksd@ncmhd.nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if

accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: January 25, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–444 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel, NCMHD Conference Grant Review (R13).

Date: February 16, 2007.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Democracy 2, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lorrita Watson, PhD, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd, Suite 800, Bethesda, MD 20892–5465, (301) 402–1366, *watsonl@ncmhd.nih.gov.*

Dated: January 25, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–452 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute, Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Research Program Project in Vascular Inflammation.

Date: February 26, 2007.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton BWI Airport, 7032 Elm Road, Baltimore, MD 21240.

Contact Person: Charles Joyce, PhD., Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Exploratory/Developmental Grants Phase II (R 33's).

Date: March 22–23, 2007.

Time: 9 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: Keith A. Mintzer, PhD., Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–435–0280, *mintzerk@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: January 25, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–447 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; ZEB1 OSR C M1 S TERM.

Date: March 9, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

Dated: January 25, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–442 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Common Genetic Variation and Diabetes Traits in Framingham.

Date: March 2, 2007.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Total Parenteral Nutrition.

Date: March 12, 2007.

Time: 4:30 p.m. to 5:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Feeding and Pancreatic Rest in Acute Pancreatitis.

Date: March 16, 2007.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20852, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Training Grants.

Date: March 19, 2007.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara A. Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ''Loan Repayment Program Review''.

Date: May 10, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 914, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 25, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–443 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Mechanisms of Immune Tolerance.

Date: February 22, 2007.

Time: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Gene Expression Dissection of the Murine Immune System.

Date: February 27, 2007.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Sujata Vijh, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vijhs@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: January 25, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–445 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Biological Aging Review Committee.

Date: February 14, 2007.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group; Behavior and Social Science of Aging Review Committee.

Date: March 1–2, 2007.

Time: 4 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue/Room 2C212, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group; Clinical Aging Review Committee.

Date: March 1–2, 2007.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Alicja L. Markowska, PhD, DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 26, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–449 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee.

Date: February 27–28, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–3528, *gm12w@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: January 26, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–450 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: March 8–9, 2007.

Time: March 8, 2007, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Time: March 9, 2007, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Arthur A. Petrosian, PhD, Scientific Review Administrator, Division of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892–7968, 301–496–4253, *petrosia@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: January 25, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–446 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The 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: Cell Biology Integrated Review Group, Intercellular Interactions Study Section.
Date: February 15–16, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *byrnesn@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Innate Immunity and Inflammation Study Section.
Date: February 22–23, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Bioengineering and Physiology.
Date: February 26, 2007.
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: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892, 301–435–2397, *tandonp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetic Variation and Evolution.
Date: February 26, 2007.
Time: 1:15 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: Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular Biology.
Date: February 27, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095J, MSC 7822, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genes, Genomes, and Genetics Specials.
Date: March 1–2, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Michael A. Marino, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuropsychiatric Mechanisms, Genetics and Models.
Date: March 1–2, 2007.
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: Boris P. Sokolov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, (301) 435–1197, *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical and Bioanalytical Sciences.
Date: March 1, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Sciences Small Business Activities.
Date: March 1, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroimmunology and Brain Tumors Study Section.
Date: March 1–2, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184, *joshij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BDCN Fellowship SEP.
Date: March 1–2, 2007.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Suzan Nadi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, (301) 435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, LIRR Member Conflicts.
Date: March 1, 2007.
Time: 1 p.m. to 4 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: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts: CIGP, GCMB and HBPP.
Date: March 1, 2007.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Rehabilitation Interventions and Outcomes.
Date: March 1, 2007.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Gabriel B. Fosu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel,

Neurobiology of Circadian Rhythm and Sleep.

Date: March 1, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Adaptations.

Date: March 2, 2007.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hemostasis System.

Date: March 2, 2007.

Time: 2 p.m. to 4 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 T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 26, 2007.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–448 Filed 1–31–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–27096]

Towing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Towing Safety Advisory Committee (TSAC). TSAC advises the Coast Guard on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

DATES: Application forms should reach the Coast Guard on or before March 30, 2007.

ADDRESSES: Applications are available on the Advisory Committee Web site at *http://homeport.uscg.mil/mycg/portal/ep/home.do,* ''Ports and Waterways,'' ''Safety Advisory Committees,'' and look for ''ACM'' (Application for Committee Membership). You may also request an application form by writing to Commandant (CG–3PS0–1/TSAC); U.S. Coast Guard, Room 1210; 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–372–1401; or by faxing 202–372–1926. Send your original completed and signed application in written form to the above street address. Be sure to sign and include the short page that allows us to keep political affiliation on file. In addition to your phone number, please indicate your e-mail address in the ''TELEPHONE'' block. This notice is available on the Internet at *http://dms.dot.gov* in docket USCG–2007–27096.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante; Assistant Executive Director of TSAC, telephone 202–372–1407, fax 202–372–1926, or e-mail *Gerald.P.Miante@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Towing Safety Advisory Committee (TSAC) is a Federal advisory committee mandated by Congress and operates under 5 U.S.C. App. 2, (Pub. L. 92–463, 86 Stat. 770, as amended). It advises the Secretary of Homeland Security on matters relating to shallow-draft inland and coastal waterway navigation and towing safety. This advice also assists the Coast Guard in formulating the position of the United States in advance of meetings of the International Maritime Organization.

TSAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its Subcommittees and working groups may meet to consider specific issues as required. The 16-person membership includes 7 representatives of the Barge and Towing Industry (reflecting a regional geographical balance); 1 member from the Offshore Mineral and Oil Supply Vessel Industry; and 2 members from each of the following areas: Maritime Labor; Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge); Port Districts, Authorities, or Terminal Operators; and the General Public.

We are currently considering applications for three positions from the Barge and Towing Industry, one position from Port Districts, Authorities, or Terminal Operators; one position from Maritime Labor; and two positions from Shippers. To be eligible, applicants should have particular expertise, knowledge, and experience relative to the position in towing operations, marine transportation, or business operations associated with shallow-draft inland and coastal waterway navigation and towing safety. Each member serves for a term of up to 4 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

When filling in the ''Name of Committee you are interested in'' block, please indicate ''TSAC'' followed by the position category (e.g., Barge and Towing, Maritime Labor, Port Districts, Authorities, or Terminal Operators, or Shipper) for which you are applying.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: January 26, 2007.

L.W. Thomas,

Captain, U.S. Coast Guard, Acting Director of National and International Standards, Assistant Commandant for Prevention-Operations.

[FR Doc. E7–1612 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection under Review: Form G–1054, Request for Fee Waiver Denial Letter; OMB Control No. 1615–0089.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is

published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 2, 2007.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0089 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the 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 agencies 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 submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Fee Waiver Denial Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–1054; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The regulations at 8 CFR 103.7(c) allows U.S. Citizenship and Immigration Services (USCIS) to waive fees for benefits under the Immigration and Nationality Act (Act). This form is used to maintain consistency in the adjudication of fee waiver requests, to collect accurate data on amounts of fee waivers, and to facilitate the public-use process.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 16,000 responses at 1.25 hours (75 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, please contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: January 29, 2007.

Richard Sloan,

Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E7–1638 Filed 1–31–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act; Form I–687. OMB Control No. 1615–0090.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on November 27, 2006, at 71 FR 68632, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 5, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *kastrich@omb.eop.gov.*

When submitting comments by e-mail please make sure to add OMB Control Number 1615–0090. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–687. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and Households. The collection of information on Form I–687 is required to verify the applicant's eligibility for temporary status, and if the applicant is deemed eligible, to grant him or her the benefit sought.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 1 hour and 10 minutes (1.16 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 116,000 annual burden hours.

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: January 29, 2007.

Stephen Tarragon,

Deputy Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E7–1639 Filed 1–31–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–ET; F–025943]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Withdrawal.

SUMMARY: On behalf of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, the Bureau of Land Management proposes to extend the duration of Public Land Order (PLO) No. 3708, as modified by PLO No. 6709, for an additional 20-year period. This order withdrew approximately 8,500 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws, to protect the Gilmore Satellite Tracking Station. This notice also gives an opportunity to comment on the proposed action.

DATES: Comments must be received by May 2, 2007.

ADDRESSES: Comments should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: Susan J. Lavin, BLM Alaska State Office, 907–271–3826.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 3708 (30 FR 8753, July 10, 1965), as modified by PLO No. 6709 (54 FR 6919, February 15, 1989), will expire on February 14, 2009, unless extended. The U.S. Department of Commerce, National Oceanic and Atmospheric Administration has filed an application to extend the withdrawal for an additional 20-year period to protect the facilities at the Gilmore Satellite Tracking Station.

This withdrawal comprises approximately 8,500 acres of public land described in PLO No. 6709 (54 FR 6919, February 15, 1989) and located in:

Fairbanks Meridian

T. 2 N., R. 1 E.,
Secs. 13, 14, 17, 20 to 30, inclusive, 34 and 35.
T. 2 N., R. 2 E.,
Secs. 7, 8, and 17 to 20, inclusive.

A complete description can be provided by the BLM Alaska State Office at the address shown above.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not adequately protect the Federal investment in the Gilmore Satellite Tracking Station.

There are no suitable alternative sites available since the Gilmore Satellite Tracking Station is already constructed on the above-described public land.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM State Director at the address indicated above. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in the entirety.

Notice is hereby given that a public meeting will be held since the proposed withdrawal extension affects over 5,000 acres. A notice of the time and place of the public meeting will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4 and subject to Section 204(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000) and Section 810 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120 (2000).

Dated: January 26, 2007.

Carolyn J. Spoon,

Chief, Branch of Lands and Realty.

[FR Doc. E7–1603 Filed 1–31–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–07–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: *Effective Dates:* Filing is effective at 10 a.m. on the date indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Plats of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on November 30, 2006:

The plat, representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and a metes-and-bounds survey of a portion of U.S. Highway No. 93, Township 11 South, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 824, was accepted November 28, 2006.

The plat, in four (4) sheets, representing the dependent resurvey of the east boundary, portions of the west and north boundaries and a portion of the subdivisional lines, a metes-and-bounds survey of a portion of U.S. Highway No. 93, and a metes-and-bounds survey through sections 24, 25 and 36, Township 12 South, Range 63 East, Mount Diablo Meridian, Nevada,

under Group No. 824, was accepted November 28, 2006.

These surveys were executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on December 12, 2006.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 16, and metes-and-bounds surveys in section 16, Township 35 North, Range 37 East, Mount Diablo Meridian, Nevada, under Group No. 835, was accepted December 8, 2006.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys may be furnished to the public upon payment of the appropriate fees.

Dated: January 19, 2007.

David D. Morlan,

Chief Cadastral Surveyor, Nevada.

[FR Doc. E7–1574 Filed 1–31–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of public meetings.

SUMMARY: This notice announces two public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these meetings is required under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

DATES: Saturday, March 10, 2007, 9 a.m.

ADDRESSES: New Jersey District Office, Walpack, NJ 07881.

The agenda will include reports from Citizen Advisory Commission members including committees such as Natural Resources, Inter-Governmental, Cultural Resources, By-Laws, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

Date: Saturday, March 10, 2007, 9 a.m.

Addresses: New Jersey District Office, Walpack, NJ 07881.

The agenda will include election of Delaware Water Gap National Recreation Area Citizen Advisory Commission officers for the 2007–2008 term.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue, 570–426–2418.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Dated: January 17, 2007.

John J. Donahue,

Superintendent.

[FR Doc. 07–432 Filed 1–31–07; 8:45 am]

BILLING CODE 4312–JG–M

INTERNATIONAL TRADE COMMISSION

Government in the Sunshine Act Meeting Notice; [USITC SE–07–001]

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 20, 2007 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–739 (Second Review)(Clad Steel Plate from Japan)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 1, 2007.)
5. Inv. No. 731–TA–895 (Review)(Pure Magnesium from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before March 1, 2007.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 29, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 07–462 Filed 1–30–07; 2:17 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Agere Systems, Inc., et al.,* Civil Action No. AMD–07–155, was lodged with the United States Court for the District of Maryland on January 19, 2007.

In a complaint filed with the consent decree, the United States seeks injunctive relief and reimbursement and a declaratory judgment for costs incurred and to be incurred in connection with the Spectron, Inc. Superfund Site (''Site''), located in Elkton, Maryland, from 98 settling defendants pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') 42 U.S.C. 9606, 9607. These 98 settling defendants agree to finance and perform the surface remedy selected for the Site and to pay $507,300 to natural resource trustees to resolve the federal and state natural resource damage claims relating to the Site. In addition, settling defendants agree to finance and perform a future, yet unknown, groundwater remedy, provided that the cost estimate of such OU2 selected remedy does not exceed $10 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment andNatural Resources Division, P.O. Box 7611, Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Agere Systems, Inc., et al.,* DOJ Ref. # 90–11–2–482/3.

The proposed consent decree may be examined at the office of the United

States Attorney, District of Maryland, 36 S. Charles Street, Fourth Floor, Baltimore, MD 21201, and at U.S. EPA Region III, 1650 Arch St., Philadelphia, PA 19103. A copy of the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent decree without signature pages and appendices, please enclose a check in the amount of $28.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. To request a complete copy of the consent decree with appendices, please enclose a check in the amount of $62.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–425 Filed 1–31–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and the City of Wakefield, NE Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on January 9, 2007, a proposed Consent Decree (Consent Decree) with Defendant City of Wakefield, Nebraska (City) in the case of *United States* v. *the City of Wakefield, Nebraska and M.G. Waldbaum Co.,* Civil Action No. 8:07–cv–00014–TDT, has been lodged, concurrently with filing of a complaint, in the United States District Court for the District of Nebraska.

This Consent Decree resolves the United States' claims against the City under Sections 301 and 402 of the Clean Water Act, 33 U.S.C. 1311 and 1342, for violations of the effluent limitations and other conditions of the City's National Pollutant Discharge Elimination System (NPDES) Permit for its Publicly Owned Treatment Works (POTW). Under the terms of the decree, the City shall comply with the Clean Water Act and the terms of its NPDES permit and perform injunctive relief, including increased monitoring of the POTW. The City also agrees to pay civil penalties to the United States and the State of Nebraska totaling $20,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *the City of Wakefield, Nebraska and M.G. Waldbaum Co.,* Civil Action No. 8:07–cv–00014–TDT, D.J. Ref. 90–5–1–1–08346.

The Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102–1506, and at the Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood *tonia.fleetwood@usdoj.gov*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.50 (25 cents per page reproduction cost) payable to the United States Treasury for payment.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 07–423 Filed 1–31–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States of America and M.G. Waldbaum Co., Under the Clean Water Act and Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on January 9, 2007, a proposed Consent Decree (Consent Decree) with Defendant M.G. Waldbaum Co. (Waldbaum) in the case of *United States* v. *the City of Wakefield, Nebraska and M.G. Waldbaum Co.,* Civil Action No. 8:07–cv–00014–TDT, has been lodged, concurrently with filing of a complaint, in the United States District Court for the District of Nebraska.

This Consent Decree resolves the United States' claims against Waldbaum under Sections 301, 307 and 402 of the Clean Water Act, 33 U.S.C. 1311, 1317 and 1342, for overloading the City of Wakefield's wastewater treatment lagoons thereby violating the prohibition on pass through and/or interference with a Publicly Owned Treatment Works, illegally discharging manure-laden runoff from one of its farm facilities to waters of the United States, and improperly land-applying process wastes in violation of its permit, as well as under the Clean Air Act, 42 U.S.C. 7412(r), and its implementing regulations, for improper storage and handling of anhydrous ammonia at one of its egg processing facilities. Under the decree, Waldbaum will among other things comply with a schedule in its permit for construction of a wastewater treatment plant and obtain a permit for the farm facility from which it illegally discharged manure-laden runoff. Waldbaum also agrees to pay civil penalties to the United States and the State of Nebraska totaling $1,050,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *the City of Wakefield, Nebraska and M.G. Waldbaum Co.,* Civil Action No. 8:07–cv–00014–TDT, D.J. Ref. 90–5–1–1–08346.

The Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102–1506, and at the Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. During the public comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $40.50 (25 cents per

page reproduction cost) payable to the United States Treasury for payment.

Robert E. Maher, Jr.

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 07–424 Filed 1–31–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Filing of Agreed Order Under 28 CFR 50.7

Consistent with 28 CFR 50.7, notice is hereby given that on January 12, 2007, a proposed Agreed Order wtih Foamex L.P., one of the debtors in the Chapter 11 bankruptcy proceeding In re: Foamex International, Inc, et al., Chap. 11, Bankr. No. 05–12685(KG) (Jointly Administered) (Bankr. D. Del.), has been lodged with the United States Bankruptcy Court for the District of Delaware.

On March 17, 2006, the United States of America, on behalf of its Environmental Protection Agency (''EPA'') filed a Proof of Claim in the above referenced bankruptcy proceedings. The Proof of Claim asserted claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9601 *et seq.,* related to the Omega Chemical Corporation Superfund Site in California and for civil penalties related to alleged violations observed during a multimedia inspection of one of Foamex's facilities, located in Corry, Pennsylvania.

The Agreed Order resolves EPA's penalty claims with respect to Foamex's Corry facility in exchange for an anticipated payment of $128,560. In addition, Foamex will increase the capacity of the secondary containment for the tank truck unloading area at its Corry facility so that it is sufficient to contain 2,000 gallons. The proposed Agreed Order also provides that EPA's CERCLA claim for the Omega Site will ''pass-through'' the bankruptcy unaffected, to be dealt with in the reorganized Debtor's ordinary course of business.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Agreed Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re: Foamex International Inc.* (Agreed Order, DOJ Ref. No. 90–11–3–08759/1).

The Agreed Order may be examined at U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029 (contact Daniel Isales, Esq. (404) 562–9670). During the public comment period, the Agreed Order may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Agreed Order may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Agreed Order from the Consent Decree Library, please refer to *In re: Foamex International Inc.* (Agreed Order, DOJ Ref. No. 90–11–3–08759/1), and enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–426 Filed 1–31–07; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 07–006]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

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

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Gather Web site usability data by a combination of a data collection instruments to be used by Web and product design teams to enhance NASA Web sites and educational products, making them easier to use and more effective for users to access Agency information with the least amount of time, frustration, and effort.

II. Method of Collection

Usability data is gathered using various methods and resources, including but not limited to candidate screening, user observation, focus groups, questionnaires, and in-person interviews by means of questionnaires on a Web site, e-mail attachments, faxes, telephone, and direct communication.

III. Data

Title: Generic Web Site Usability Information Collections.

OMB Number: 2700–XXXX.

Type of review: Generic Collection.

Affected Public: Individuals or households.

Number of Respondents: 1800.

Responses Per Respondent: 1.

Annual Responses: 600.

Hours Per Response: 1.5 hours.

Annual Burden Hours: 900.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

Gary Cox,

Deputy Chief Information Officer (Acting).

[FR Doc. E7–1648 Filed 1–31–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–005)]

NASA Advisory Council; Science Committee; Science Subcommittees; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Science Subcommittees of the NASA Advisory Council (NAC). These Subcommittees report to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other persons scientific and technical information relevant to program planning.

DATES: Monday, February 26, 2007, 8 a.m. to 5 p.m. Mountain Standard Time.

ADDRESSES: Fiesta Inn Resort, 2100 South Priest Drive, Tempe, AZ 85282.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will primarily consist of five separate breakout sessions of the Subcommittees of the NAC Science Committee. The five Subcommittees are: The Astrophysics Subcommittee, the Earth Science Subcommittee, the Heliophysics Subcommittee, the Planetary Sciences Subcommittee, and the Planetary Protection Subcommittee. The breakout sessions will focus on: (1) Preparation for the next day's Workshop on Science Associated with the Lunar Exploration Architecture; (2) Program updates from Directors in NASA's Science Mission Directorate; (3) Topics specific to each Subcommittee; and (4) An update by the NASA Administrator.

Findings and recommendations developed by the Subcommittees during their breakout sessions will be submitted to the Science Committee of the NAC.

The meeting will be open to the public up to the seating capacity of the rooms. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a visitor's register.

Dated: January 26, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E7–1642 Filed 1–31–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 07–004]

NASA Advisory Council Workshop on Science Associated With the Lunar Exploration Architecture

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The Science Committee of the NASA Advisory Council (the Council) announces a workshop of its Science Subcommittees. The Workshop on Science Associated with the Lunar Exploration Architecture will be held for the purpose of soliciting from the scientific community scientific and technical information relevant to planning the science objectives and activities associated with lunar exploration within the framework of the Vision for Space Exploration.

DATES: Tuesday, February 27, 2007, 8 a.m. to 5 p.m., Wednesday, February 28, 2007, 8 a.m. to 8 p.m., Thursday, March 1, 2007, 8 a.m. to 5 p.m., and Friday, March 2, 2007, 8 a.m. to 11 a.m., Mountain Standard Time (MST).

LOCATION: Fiesta Inn Resort, 2100 South Priest Drive, Tempe, AZ, 85282.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Wargo, Exploration Systems Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0822 or *michael.wargo@nasa.gov* or Ms. Lisa May, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2411 or *lisa.may@nasa.gov.*

SUPPLEMENTARY INFORMATION: The Workshop will feature plenary sessions by NASA officials on the Lunar Exploration Architecture and by members of the science community on potential science activities and objectives. Following the opening plenary session, the Workshop will break out into meetings of the Astrophysics Subcommittee, Earth Sciences Subcommittee, Heliophysics Subcommittee, Planetary Sciences Subcommittee, and Planetary Protection Subcommittee, and into cross-cutting topical sessions. The breakout sessions will focus on:

(1) Defining the key objectives of science associated with, or enabled by, lunar exploration;

(2) Discussing implementation to achieve the objectives;

(3) Prioritizing objectives within the framework of the emerging lunar architecture.

The overall objective of the Workshop is to provide input from the scientific community through the Advisory Council to NASA regarding recommendations for science associated with the return to the Moon.

The Workshop will be open to the public and scientific community up to the seating capacity of the rooms. A poster session will be organized for the presentation of contributed white papers, on Wednesday evening, February 28, 2007.

Information concerning all aspects of the Workshop can be found online at: *https://www.infonetic.com/tis/lea/.* Findings and recommendations developed by the Subcommittees during the Workshop will be submitted to the Science Committee of the NASA Advisory Council and, subsequently, to the Council as a whole for possible deliberation on recommendations to NASA regarding planning and implementation of its Lunar Exploration Architecture and related science programs.

Dated: January 26, 2007.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E7–1649 Filed 1–31–07; 8:45 am]

BILLING CODE 7510–13–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 March 5, 2007. (Note that the new time period for requesting copies has changed from 45 to 30 days after publication). 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: requestschedule@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.

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 (Note that the new time period for requesting copies has changed from 45 to 30 days after publication):

1. Department of Agriculture, Cooperative State Research, Education, and Extension Service (N1–540–07–2, 9 items, 9 temporary items). Records relating to invention reporting and patent application, peer panel administration, and routine staff meetings. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of the Army, Agency-wide, (N1–AU–06–8, 3 items, 1 temporary item). System outputs and reports associated with an electronic information system used to track basic human resources information from multiple sources. Data includes names, social security numbers, addresses, promotions, and assignments. The electronic data in this system and related documentation are proposed for permanent retention.

3. Department of the Army, Agency-wide (N1–AU–07–2, 1 item, 1 temporary item). Records relating to individual retiree compensation for combat-related injury or illness. Included are applications, claim forms, physician's reports, Veteran's Administration Disability Rating Decisions, Line of Duty Investigations, and Army Reserves retirement point summaries. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

4. Department of the Army, Agency-wide (N1–AU–07–7, 4 items, 4 temporary items). Records used to control and manage aircraft, aviation-associated equipment, mission related equipment, and aircraft maintenance. Included are aircraft maintenance registers, parts and equipment exchange tags, preventive maintenance schedules, and ground support equipment maintenance files. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of Commerce, United States Patent and Trademark Office (N1–241–06–1, 2 items, 2 temporary items). Records associated with employee examinations, including test materials, results, rosters, and confidentiality agreements.

6. Department of Commerce, United States Patent and Trademark Office (N1–241–06–2, 4 items, 2 temporary items). Records include trademark case file feeder records, indexes related to the feeder records, and general administrative and short-term subject files associated with data entry, tracking of work production, and extra copies of materials found elsewhere in this records schedule. Proposed for permanent retention are recordkeeping copies of trademark program and policy subject files, and trademark case files and related indexes. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Defense, Office of the Secretary of Defense (N1–330–06–2, 3 items, 2 temporary items). Master files and outputs associated with an electronic information system used to track changes to the Defense Federal Acquisition Regulation. Data includes workflow tracking data, general comments, meeting notes, discussions, and routine reports. System electronic case files are proposed for permanent retention.

8. Department of Defense, National Geospatial-Intelligence Agency (N1–537–05–2, 13 items, 7 temporary items). Finished intelligence reports and products, briefings, special collections, and imagery derived products maintained by offices other than the office of primary responsibility. Proposed for permanent retention are recordkeeping copies of finished intelligence reports and products, briefings, special collections, and imagery derived products. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

9. Department of Homeland Security, Transportation Security Administration (N1–560–04–12, 12 items, 10 temporary items). Records of the Office of Intelligence including inputs, outputs, master files, and documentation associated with electronic information systems used to identify information about known or suspected threats to modes of transportation; routine case files; working files; watch logs; published intelligence reports and assessments; and circulars. Proposed for permanent retention are recordkeeping copies of significant case files and briefings, speeches, addresses, and comments.

10. Department of Justice, Federal Bureau of Investigation (N1–65–07–5, 1 item, 1 temporary item). In accordance with the provisions of schedule N1–65–88–3, the agency requests authority to destroy, under a Federal Pre-Trial Diversion Program court order, case number 288A–CO–26047, which pertains to the investigation of the captioned individual.

11. Department of the Treasury, Office of the Comptroller of the Currency (N1–101–07–3, 3 items, 3 temporary items). Records relating to Web site operations including manuals, user logs, user statistics, reports, and content tracking records.

12. Environmental Protection Agency, Region 5 (N1–412–06–1, 7 items, 2 temporary items). FOIA request files and Web site snapshot maintained by EPA Region 5 Water Division's Crandon Project Team. Proposed for permanent retention are recordkeeping copies of Crandon Project Team Coordinator subject files, Crandon Mining Company applications and submissions, records of the Waste Management Permit Branch, Wisconsin Division of Natural Resources reports and studies, and hydrological data on related watersheds.

13. Environmental Protection Agency, Agency-wide (N1–412–07–15, 2 items, 1 temporary item). This schedule authorizes the agency to apply the existing disposition instructions to record series regardless of recordkeeping medium. The records include compliance monitoring and enforcement for controlling toxic substances files. Paper recordkeeping copies of these files were previously approved for disposal. Also included are records relating to enforcement of toxic substances statutes, regulations and standards, for which paper recordkeeping copies previously were approved as permanent.

14. Environmental Protection Agency, Agency-wide (N1–412–07–16, 4 items, 3 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to several record series regardless of recordkeeping medium. The records include documents and letters relating to the development of air and water standards, including submission, progress, and status of clean air standards being enacted into law by states and territories and submitted to EPA for review and approval. Paper recordkeeping copies of these files were previously approved for disposal. Also included are the following records for which paper recordkeeping copies were previously approved as permanent: water standards documents pertaining to the waterways within and bordered by the states and industries within the states, activities relative to the permit program, development of state clean water acts, and enforcement cases.

15. Environmental Protection Agency, Agency-wide (N1–412–07–17, 2 items, 1 temporary item). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of the recordkeeping medium. The records include documents relating to the interim program for controlling air pollutants. Paper recordkeeping copies of these files were previously approved for disposal. Also included are files relating to the enforcement of industrial and municipal compliance with clean air regulations and standards, for which paper recordkeeping copies previously were approved as permanent.

16. Environmental Protection Agency, Agency-wide (N1–412–07–19, 2 items, 1 temporary item). This schedule authorizes the agency to apply the existing disposition instructions to records series regardless of the recordkeeping medium. The records include documents and data relating to statements of program, guidance, policies, strategies, analysis of state laws, interim and final authorities and statements of Attorney General. Paper recordkeeping copies of these files were previously approved for disposal. Also included are records relating to the enforcement of hazardous waste statutes, regulations, and standards, for which paper recordkeeping copies previously were approved as permanent.

17. Environmental Protection Agency, Agency-wide (N1–412–07–20, 1 item, 1 temporary item). This schedule authorizes the agency to apply the existing disposition instructions to a series of records regardless of the recordkeeping medium. The records include documents and data relating to the control of emissions from automobile engines. Paper recordkeeping copies of these files were previously approved for disposal.

18. Environmental Protection Agency, Agency-wide (N1–412–07–21, 10 items, 10 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to a number of records series regardless of the recordkeeping medium. The records include criminal enforcement counsel files, pesticide program enforcement files, emission control program files, motor vehicle files, and motor vehicle import declaration files. Paper recordkeeping copies of these files were previously approved for disposal.

19. Environmental Protection Agency, Agency-wide (N1–412–07–22, 3 items, 3 temporary items). This schedule authorizes the agency to apply the existing disposition instructions to a number of records series regardless of the recordkeeping medium. The records include sampling and analytical data files, rapid tax amortization files and permit appeal files. Paper recordkeeping copies of these files were previously approved for disposal.

20. National Archives and Records Administration, Government-wide (N1–GRS–07–1, 5 items, 4 temporary items). Revision of General Records Schedule 26 establishing a fixed age of destruction for files of advisory commissions, committees, councils, boards, and other groups established under the Federal Advisory Committee Act that relate to day-to-day activities and/or do not contain unique information of historical value. This schedule also revises the retention guidance for Web site records. Proposed for permanent retention are files documenting the establishment, membership, policy, organization, deliberations, findings, and recommendations of commissions and other groups established under the Federal Advisory Committee Act.

Dated: January 25, 2007.

Michael J. Kurtz,

Assistant Archivist for Records Services, Washington, DC.

[FR Doc. E7–1607 Filed 1–31–07; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–186]

In the Matter of the Curators of the University of Missouri, The University of Missouri Research Reactor; Order Modifying Emergency Plan Requirements

I

The Curators of the University of Missouri (the Licensee) hold Amended Facility License No. R–103 issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to Title 10, Part 50, ''Domestic Licensing of Production and Utilization Facilities'' (10 CFR part 50), and Broad Scope Materials License No. 24–00513–39 issued by the NRC pursuant to 10 CFR part 30, ''Rules of General Applicability to Domestic Licensing of Byproduct Material.'' Amended Facility License No. R–103 authorizes the operation of the University of Missouri Research Reactor (MURR or the facility) in accordance with conditions specified therein. Broad Scope Materials License No. 24–00513–39 authorizes the possession and use of various byproduct, special nuclear, and source material at the Licensee's facility. The facility is located on the Licensee's campus in Columbia, Missouri.

II

On March 19 and April 5, 1990, the NRC staff issued two license amendments applicable to the Licensee's Special Nuclear Material and Source Material License No. SNM–247. At the request of the Licensee, the NRC terminated Special Nuclear Material and Source Material License No. SNM–247 on July 7, 1993. On that day, the Commission included the special nuclear materials that were listed on Special Nuclear Material and Source Material License No. SNM–247 in the University's newly issued Broad Scope Materials License No. 24–00513–39. The amendments collectively authorized the Licensee to possess and use certain specified quantities of uranium (depleted in U–235), neptunium-237, americium-241, plutonium-239, and plutonium-240. The Licensee's purpose in requesting the amendments was to conduct research related to the Transuranic Management by Pyropartitioning Separation (TRUMP–S) Research Project. The Licensee carried out this research in the Alpha laboratory at the MURR.

Three organizations and 10 individuals filed motions to intervene and requests for hearing on the license amendments. In response to the intervenors' filings, the Commission appointed a Presiding Officer to conduct an informal hearing pursuant to Subpart L, ''Informal Hearing Procedures for NRC Adjudications'' of the Commission's procedural regulations in 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders.'' The Presiding Officer issued a First Initial Decision on April 5, 1991, followed by a Final Initial Decision on July 10, 1991.

The Licensee and the intervenors appealed various aspects of the proceeding and decisions of the Presiding Officer and the Commission to the Commission. In response, the Commission issued Memorandum and Order, CLI–95–01, dated February 28, 1995; Memorandum and Order, CLI–95–08, (Petitions for Reconsideration), dated June 22, 1995; Memorandum and Order, CLI–95–11, (Petition for Partial Reconsideration), dated August 22, 1995; and Memorandum and Order, CLI–95–17, (Petition for Reconsideration), dated December 14, 1995. The first three of these memoranda and orders required the Licensee to make changes to the MURR Emergency Plan (EP). The MURR EP was changed because the material, while under a NRC broad scope materials license, was being used in the Alpha Laboratory at MURR. In response to the memoranda and orders, the Licensee submitted proposed changes to the EP on December 20, 1995, as supplemented on May 1, 1996. The NRC staff reviewed the Licensee's proposed changes to the EP and, in a letter to the Licensee dated June 20, 1996, concluded that the proposed changes to the EP met the intent of the Commission's memoranda and orders and were acceptable as written.

III

By letter dated March 31, 2004, the Licensee requested changes to the EP to remove the requirements added to it by the Commission's memoranda and orders related to the TRUMP–S Research Project. The Licensee also requested the recision of the Commission's memoranda and orders requiring changes to the EP. The Licensee completed experiments at the MURR related to the TRUMP–S Research Project on September 30, 1997. By July 20, 1998, the Licensee had shipped all low-level waste from the project and completed final verification surveys documenting the decommissioning of the Alpha Laboratory. All transuranic waste (americium, neptunium, and plutonium) was shipped from the MURR to the Waste Isolation Pilot Plant on May 15, 2003. The NRC renewed Broad Scope Materials License No. 24–00513–39, effective December 22, 2003, with reduced possession limits for the radioisotope types associated with the TRUMP–S Research Project. The renewed license possession limits allow no radioisotope quantities in excess of the quantities listed in 10 CFR 30.72 Schedule C, ''Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release.'' The NRC staff reviewed the Licensee's proposed changes to the EP and concluded that they will not decrease the effectiveness of the EP and are therefore acceptable.

IV

Accordingly, pursuant to Sections 104c, 161b and 161i of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR part 50, *it is hereby ordered that:*

The changes to the University of Missouri Research Reactor Emergency Plan imposed by Commission-issued Memoranda and Orders CLI–95–01 dated February 28, 1995; CLI–95–08 dated June 22, 1995; and CLI–95–11 dated August 22, 1995, are hereby deleted and the changes to the Emergency Plan for the University of Missouri Research Reactor in the Licensee's letter of March 31, 2004, are approved.

V

Pursuant to the Atomic Energy Act of 1954, as amended, the licensee or any other person adversely affected by this Order may request a hearing within 30 days of the date of publication of this Order in the **Federal Register**. A request for a hearing or a petition for leave to intervene must be filed (1) By first class mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or (2) by courier, express mail, or expedited delivery services to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in delivery of mail to U.S. Government offices, it is requested that requests for hearing

should also be transmitted to the Secretary of the Commission either by e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@nrc.gov*, or by facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101 (the verification number is 301–415–1966).

A copy of the request for hearing and petition for leave to intervene must also be sent to the Director, Office of Nuclear Reactor Regulation and to the Assistant General Counsel for Operating Reactors and High Level Waste Programs, Office of the General Counsel, with both copies addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The NRC further requests that copies be transmitted either by facsimile transmission to 301–415–3725 or by e-mail to *OGCMAILCENTER@nrc.gov.*

If a person other than the Licensee requests a hearing, he or she shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.''

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for a hearing or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 30 days from the date of publication of this Order in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

In accordance with 10 CFR 51.10(d), this Order is not subject to Section 102(2) of the National Environmental Policy Act, as amended. The NRC staff notes, however, that with respect to environmental impacts associated with the changes imposed by this Order as described in the safety evaluation, the changes would, if imposed by other than an Order, meet the definition of a categorical exclusion in accordance with 10 CFR 51.22(c)(14)(v). Thus, pursuant to either 10 CFR 51.10(d) or 10 CFR 51.22(c)(14)(v), neither an environmental assessment nor an environmental impact statement is required.

For further information, see the application from the Licensee dated March 31, 2004 (Agencywide Documents Access Management System (ADAMS) Accession No. ML041040772), available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.thml.* Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *PDR@nrc.gov.*

Dated this 26th day of January 2007.

For the U.S. Nuclear Regulatory Commission.

Michael J. Case,

Director, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulations.

[FR Doc. E7–1633 Filed 1–31–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–00341]

Notice of Consideration of Amendment Request for Decommissioning of the Defense Logistics Agency, Hammond Depot, Hammond, IN and Opportunity to Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by April 2, 2007.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Senior Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, King of Prussia, PA 19406. *Telephone:* (610) 337–5040; *fax number:* (610) 337–5269; or *e-mail: exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. STC–133 issued to the Defense Logistics Agency (the Licensee), to authorize decommissioning of its Hammond Depot (the Facility) in Hammond, Indiana under the Licensee's Decommissioning Plan (DP).

An NRC administrative review, documented in a letter to the Defense Logistics Agency dated October 19, 2006, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. STC–133. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment and/or an Environmental Impact Statement. The license will be amended to authorize release of the Facility for unrestricted use if this amendment is approved following completion of decommissioning activities and verification by the NRC that the radiological criteria for license termination have been met.

II. Opportunity to Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding decommissioning of the Facility located in Hammond, Indiana. In accordance with the general requirements in subpart C of 10 CFR part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. *First class mail addressed to:* Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff;

2. *Courier, express mail, and expedited delivery services:* Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, *Attention:* Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, *Attention:* Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Defense Logistics Agency, Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 3229, Fort Belvoir, Virginia, 22060–6223, Attention: Michael Pecullan, Radiation Safety Officer; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304 (b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by April 2, 2007.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309 (f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.

3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.

4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.

5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting basis, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text

and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Submittal Letter dated February 3, 2006	ML060580094
Historical Site Assessment dated August 2005	ML060580605
Preliminary Site Specific Derived Concentration Guidelines	ML060580605
Radiological Scoping Survey dated December 2005	ML060580608
Environmental Assessment, Disposition of Thorium Nitrate	ML060580592
Request for Additional Information dated June 8, 2006	ML061640494
Deficiency Response Letter dated July 5, 2006	ML061870578
Deficiency Response Letter dated July 19, 2006	ML062070231
Deficiency Response Letter dated September 19, 2006	ML062710160
Radiological Characterization Survey dated August 2006	ML062710179
Decommissioning/Remediation Plan dated September 2006	ML062760618
Receipt of Decommissioning Plan Letter dated October 19, 2006	ML062930051

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at 475 Allendale Road, King of Prussia, PA, this 25th day of January 2007.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–1646 Filed 1–31–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–00341]

Notice of Consideration of Amendment Request for Decommissioning of the Defense Logistics Agency, Curtis Bay Depot, Baltimore, MD and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of amendment request and opportunity to request a hearing.

DATES: A request for a hearing must be filed by April 2, 2007.

FOR FURTHER INFORMATION CONTACT: Steve Hammann, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, King of Prussia, PA 19406. *Telephone:* (610) 337–5399; *fax number:* (610) 337–5269; or *e-mail: sth2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. STC–133 issued to the Defense Logistics Agency (the Licensee), to authorize decommissioning of its Curtis Bay Depot (the Facility) in Baltimore, Maryland under the Licensee's Decommissioning Plan (DP).

An NRC administrative review, documented in a letter to the Defense Logistics Agency dated October 19, 2006, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the approval will be documented in an amendment to NRC License No. STC–133. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment and/or an Environmental Impact Statement. The license will be amended to authorize release of the Facility for unrestricted use if this amendment is approved following completion of decommissioning activities and verification by the NRC that the radiological criteria for license termination have been met.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment regarding decommissioning of the Facility located in Baltimore, Maryland. In accordance with the general requirements in subpart C of 10 CFR part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. *First class mail addressed to:* Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff;

2. *Courier, express mail, and expedited delivery services:* Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Defense Logistics Agency, Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 3229, Fort Belvoir, Virginia 22060–6223, Attention: Michael Pecullan, Radiation Safety Officer; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304 (b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304 (b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304 (b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by April 2, 2007.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;
2. The nature of the requester's right under the Act to be made a party to the proceeding;
3. The nature and extent of the requester's property, financial or other interest in the proceeding;
4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and
5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;
2. Provide a brief explanation of the basis for the contention;
3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;
4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;
5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and
6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.
2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.
3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.
4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.
5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting basis, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Submittal Letter dated February 3, 2006	ML060580094
Historical Site Assessment	ML060580564
Preliminary Site Specific Derived Concentration Guidelines	ML060580566
Radiological Scoping Survey	ML060580581
Environmental Assessment, Disposition of Thorium Nitrate	ML060580592
Request for Additional Information	ML061640494
Deficiency Response Letter dated July 5, 2006	ML061870570
Deficiency Response Letter dated August 8, 2006	ML062290404
Characterization Survey Report	ML062650300

Decommissioning/Remediation Plan	ML062760618
Receipt of Decommissioning Plan	ML062930051

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA, this 23rd day of January 2007.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–1647 Filed 1–31–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03011981]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 29–00040–10, for Termination of the License and Unrestricted Release of the Honeywell International, Incorporated Facility in Morristown, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5393; or by e-mail: *drl1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 29–00040–10. This license is held by Honeywell International, Incorporated (the Licensee), for its facility located at 101 Columbia Road in Morristown, New Jersey (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in an amendment request dated September 8, 2005. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's September 8, 2005, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 29–00040–10 was issued on August 21, 1973, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorized the Licensee to use sealed and unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods.

The Facility is situated on 150 acres of land and consists of office buildings, laboratory buildings, and support buildings. The Facility is located in a mixed industrial commercial area with some residential. Within the Facility, use of licensed materials was confined to an area of 1675 square feet within the DEV Building, specifically Laboratories 4, 7, and 8.

On September 18, 2003, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following unsealed radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey on October 3, 2006. This survey covered DEV Building, Laboratories 4, 7, and 8. The final status survey report was submitted with the Licensee's letter dated October 24, 2006. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in subpart E of 10 CFR part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable. Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–

1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d) requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of New Jersey's Department of Environmental Safety and Health for review on December 18, 2006. On December 26, 2006, the State of New Jersey responded by letter, agreeing with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''
5. Honeywell International Inc., Termination Request Letter dated September 8, 2005, under cover letter dated August 31, 2005 [ML052590382];
6. Honeywell International Inc., Deficiency Response Letter dated November 18, 2005 [ML053250525];
7. Honeywell International Inc., Deficiency Response Letter dated March 13, 2006 [ML060820354];
8. Honeywell International Inc., Deficiency Response Letter dated October 24, 2006 [ML063050527];
9. Honeywell International Inc., Deficiency Facsimile dated November 26, 2006 [ML063320313].

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia, PA this 23rd day of January, 2007.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1.

[FR Doc. E7–1645 Filed 1–31–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 19b–4(e) and Form 19b–4(e), SEC File No. 270–447, OMB Control No. 3235–0504.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') intends to submit to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below. The Code of Federal Regulation citation to this collection of information is 17 CFR 240.19b–4(e) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) (the ''Act'').

Rule 19b–4(e) permits a self-regulatory organization (''SRO'') to

immediately list and trade a new derivative securities product so long as such product is in compliance with the criteria of Rule 19b–4(e) under the Act. However, in order for the Commission to maintain an accurate record of all new derivative securities products traded through the facilities of SROs and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b–4(e), it is necessary that the SRO maintain, on-site, a copy of Form 19b–4(e) under the Act. Rule 19b–4(e) requires SROs to file a summary form, Form 19b–4(e), and thereby notify the Commission, within five business days after the commencement of trading a new derivative securities product. In addition, the Commission reviews SRO compliance with Rule 19b–4(e) through its routine inspections of the SROs.

The collection of information is designed to allow the Commission to maintain an accurate record of all new derivative securities products traded through the facilities of SROs and to determine whether an SRO has properly availed itself of the permission granted by Rule 19b–4(e).

The respondents to the collection of information are self-regulatory organizations (as defined by the Act), including national securities exchanges and national securities associations.

Fourteen respondents file an average total of 50 responses per year, which corresponds to an estimated annual response burden of 50 hours. At an average cost per burden hour of $239.50, the resultant total related cost of compliance for these respondents is $11,975 per year (50 burden hours multiplied by $239.50/hour = $11,975).

Compliance with Rule 19b–4(e) is mandatory. Information received in response to Rule 19b–4(e) shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 60 days of this notice.

Dated: January 23, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1582 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–12, SEC File No. 270–442, OMB Control No. 3235–0498.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–12 (17 CFR 240.17a–12) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) is the reporting rule tailored specifically for OTC derivatives dealers registered with the Commission, and Part IIB of Form X–17A–5,[1] the Financial and Operational Combined Uniform Single (''FOCUS'') Report, is the basic document for reporting the financial and operational condition of OTC derivatives dealers.

Rule 17a–12 requires registered OTC derivatives dealers to file Part IIB of the FOCUS Report quarterly. Rule 17a–12 also requires that OTC derivatives dealers file audited financial statements annually. There are currently five registered OTC derivatives dealers. The staff does not expect that any additional firms will register as OTC derivatives dealers within the next three years. The staff estimates that the average amount of time necessary to prepare and file the quarterly reports required by the rule is eighty hours per OTC derivatives dealer[2] and that the average amount of time for the annual audit report is 100 hours per OTC derivatives dealer, for a total of 180 hours per OTC derivatives dealer annually. Thus the staff estimates that the total number of hours necessary for the five OTC derivatives dealers to comply with the requirements of Rule 17a–12 on an annual basis is 900 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 60 days of this notice.

Dated: January 24, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1583 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55162; File No. SR–Amex–2006–106]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto, Relating to the Adoption of a Penny Pilot Program

January 24, 2007.

I. Introduction

On November 9, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission

[1] Form X–17A–5 (17 CFR 249.617).

[2] Based upon an average of 4 responses per year and an average of 20 hours spent preparing each response.

(''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit certain option classes to be quoted in pennies on a pilot basis and to adopt a quote mitigation strategy. The proposed rule change was published for comment in the **Federal Register** on November 20, 2006.[3] The Commission received four comment letters on the proposed rule change.[4] On January 18, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Exchange responded to the comment letters on January 19, 2007.[6] This order approves the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposal

A. Scope of the Penny Pilot Program

Amex proposes to amend its rules to permit certain option classes to be quoted in pennies during a six-month pilot (''Penny Pilot Program''), which would commence on January 26, 2007. Specifically, proposed Commentary .01 to Amex Rule 952 would set forth the parameters of the Penny Pilot Program and note that information concerning the Penny Pilot Program will be communicated to members via Regulatory Circular.

Currently, all six options exchanges, including Amex, quote options in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than $3 per contract is $0.05 and the minimum price variation for quotations in options series that are quoted at $3 per contract or greater is $0.10. Under the Penny Pilot Program, beginning on January 26, 2007, market participants would be able to begin quoting in penny increments in certain series of option classes.

The Penny Pilot Program would include the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (SUNW); and Agilent Technologies, Inc. (A). The Exchange will communicate the list of options to be included in the Penny Pilot Program to its membership via Regulatory Circular.

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, would be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs would be quoted in $0.01 increments for all options series.

Amex commits to deliver a report to the Commission during the fourth month of the pilot, which would be composed of data from the first three months of trading. The report would analyze the impact of penny pricing on market quality and options system capacity.

B. Quote Mitigation Proposal

To mitigate quote message traffic, Amex has represented to the Commission that it has already implemented or intends to implement the following quote mitigation strategies.

- *Join Quote.* The Amex, through the ANTE system,[7] provides that registered options traders (''ROTs'') may either stream their own quotes or join the specialist's disseminated quotation in some or all of his assigned classes or series (''join quote''). In order to participate in ''join quote,'' a ROT must be physically present in the trading crowd. The purpose of allowing ROTs to piggyback on specialists' quotes is partly to reduce market data traffic by allowing ROTs to join the specialist's quote in the less actively traded series (far out months, etc.) while auto-quoting the more actively traded series.
- *Monitoring.* The Amex actively monitors the quotation activity of its market participants. When the Exchange detects that a market participant is disseminating significantly more quotes than the average market participant, the Exchange contacts the market participant and alerts them to potentially excessive quotation activity. Often such monitoring reveals that the market participant may have internal system issues or has incorrectly set system parameters. Alerting the market participant usually leads to the market participant to take steps to reduce the number of quotes for dissemination.
- *Holdback Timers.* The Amex has the systematic ability to limit the dissemination of quotations and other changes to the Amex Best Bid or Offer (''ABBO'') according to prescribed time criteria (''Holdback Timer''). For instance, if there is a change in the price of a security underlying an option, multiple market participants may adjust the price or size of their quotes. Rather than disseminating each individual change, the Holdback Timer permits the Exchange to wait until multiple market participants have adjusted their quotes and then to disseminate a new quotation. This helps to prevent the ''flickering'' of quotations. The Amex proposes to codify the Holdback Timer in this rule filing. As proposed in Amex Rule 958A–ANTE, the Exchange will utilize a Holdback Timer that delays quotation updates for no longer than one (1) second.
- *Delisting.* The Amex commits to the Commission that it will delist options with an average daily volume (''ADV'') of less than 25 contracts. However, the Amex represented to the Commission that it has been its policy to be much more aggressive in delisting relatively inactive options, thereby eliminating the quotation traffic attendant to such listings.

III. Discussion

After careful review of the proposal, the comment letters, and the Exchange's response thereto, the Commission finds that the proposed rule change, as modified by Amendment No. 1, 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 proposal is consistent with Section 6(b)(5) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54741 (November 9, 2006), 71 FR 67176.

[4] *See* letters to Nancy M. Morris, Secretary, Commission, from Wayne Jervis, Managing Member of the General Partner, Jervis Alternative Asset Management Co. (''JAAMCO''), dated December 1, 2006 (''JAAMCO Letter''); from Christopher Nagy, Chair, Securities Industry and Financial Markets Association (''SIFMA'') Options Committee, dated December 20, 2006 (''SIFMA Letter''); from Peter J. Bottini, Executive Vice-President, optionsXpress, Inc. (''optionsXpress''), dated November 17, 2006 (''optionsXpress Letter''); and from Patrick Sexton, Associate General Counsel, Chicago Board Options Exchange, Inc. (''CBOE''), dated December 12, 2006 (''CBOE Letter'').

[5] Amendment No. 1 proposed to replace Glamis Gold, which was delisted, with Agilent Tech, Inc. in the list of options classes permitted to be quoted in pennies. Amendment No. 1 is technical in nature, and the Commission is not publishing Amendment No. 1 for public comment.

[6] *See* letter to Nancy Morris, Secretary, Commission, from Jeffrey P. Burns, Vice President and General Counsel, Amex, dated January 19, 2007. On January 23, 2007, Amex supplemented its initial response by providing additional information about its Holdback Timer. *See* letter to Nancy Morris, Secretary, Commission, from Jeffrey P. Burns, Vice President and General Counsel, Amex, dated January 23, 2007 (collectively ''Exchange Response'').

[7] *See* Securities Exchange Act Release No. 49747 (May 20, 2004), 69 FR 30344 (May 27, 2004) (SR–Amex–2003–89).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the implementation of a limited six-month Penny Pilot Program by Amex and the five other options exchanges will provide valuable information to the exchanges, the Commission and others about the impact of penny quoting in the options market. In particular, the Penny Pilot Program will allow analysis of the impact of penny quoting on: (1) Spreads; (2) transaction costs; (3) payment for order flow; and (4) quote message traffic.

The Commission believes that the thirteen options classes to be included in the penny pilot program represent a diverse group of options classes with varied trading characteristics. This diversity should facilitate analyses by the Commission, the options exchanges and others. The Commission also believes that the Penny Pilot Program is sufficiently limited that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. Nevertheless, because the Commission expects that the Penny Pilot Program will increase quote message traffic, the Commission is also approving the Exchange's proposal to reduce the number of quotations it disseminates.

In this regard, the commenters expressed concern about Amex's proposed quote mitigation strategy.[10] In particular, although optionsXpress generally supported Amex's Holdback Timer, it expressed concern that a longer holdback timer period could negatively impact market quality and undermine transparency in the options market.[11]

In addition, SIFMA recommends that all six of the option exchanges adopt a comprehensive and uniform quote mitigation strategy.[12] In particular, SIFMA strongly supports the adoption of the Holdback Timer mitigation proposal as the most efficient means of reducing quotation traffic. SIFMA, however, expressed concern that the lack of uniformity among the quote mitigation proposals adopted by the exchanges will impose a burden on member firms and cause confusion for market participants, especially retail investors.

Although SIFMA urges the adoption of a uniform and comprehensive approach to quote mitigation, it does not oppose Amex's quote mitigation proposals. In fact, SIFMA acknowledges that certain of Amex's proposals, such as notifying members whose quote activity suggests systems malfunctions or wrong settings and delisting inactive series can contribute to quote mitigation. SIFMA, however, expressed its belief that these proposals do not go far enough to resolve the industry's concerns regarding systems capacity.

The Commission supports efforts to implement a uniform, industry-wide quote mitigation plan. It does not, however, believe such efforts preclude individual exchanges from initiating their own quote mitigation strategies. The Commission does not believe that Amex's proposed quote mitigation strategies will lead to confusion among market participants.

Finally, CBOE commented that it did not have a fundamental objection to Amex's use of the Holdback Timer, but sought additional information concerning how the Holdback Timer functions and how orders sent to Amex by CBOE members or by CBOE though linkage might be impacted by the Holdback Timer.[13] Specifically, CBOE requested additional information about the extent to which the Holdback Timer is utilized throughout the day and whether it is used uniformly in all option classes traded on Amex. In response, Amex indicated that it intends to use the Holdback Timer uniformly in all option classes.[14] In addition, the Amex committed to apply the Holdback Timer mechanism throughout the trading day for a period of up to, but no more than, one second.[15] In further response to inquiry from CBOE, the Amex represented that it does not intend to disclose the precise length of the timer to its members, to non-members or to the other exchanges.[16]

In addition, CBOE inquired whether the Holdback Timer will apply only to market maker quotations and asked the Exchange to clarify what information will be delayed by the Holdback Timer. Amex clarified that the Holdback Timer will be applied when there is a change in the price and/or size of the security underlying an option. The Exchange will wait (for a period up to one second) until multiple market participants have adjusted their quotes and then will disseminate a new quotation. The Exchange will apply the Holdback Timer to all data that it sends to OPRA.[17] Finally, in response to CBOE's inquiry regarding the treatment of incoming marketable orders, Amex indicated that Holdback Timer only ''addresses the dissemination of quote changes on the Exchange not the execution of orders.''[18] Therefore, incoming marketable orders sent to the Exchange will automatically trade against Amex's current internal quotation that may be delayed during the one second holdback period.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–Amex–2006–106), as modified by Amendment No. 1, be, and hereby is, approved on a six-month pilot basis, which will commence on January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1591 Filed 1–31–07; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] JAAMCO did not comment directly on Amex's proposal, but rather stated its strong support for quoting in penny increments in the options market, which it believes will improve inequities in the marketplace. *See* JAAMCO Letter, *supra* note 4.

[11] *See* optionsXpress Letter, *supra* note 4. OptionsXpress also stated its view that current problems with the intermarket linkage will be exacerbated in the option classes participating in the Penny Pilot Program. *Id.*

[12] *See* SIFMA Letter, *supra* note 4.

[13] *See* CBOE Letter, *supra* note 4.

[14] Telephone conversation between Michael T. Bickford, Senior Vice President, Amex, and Jennifer L. Colihan, Special Counsel, Cyndi N. Rodriguez, Special Counsel, and Johnna B. Dumler, Special Counsel, Division of Market Regulation, Commission, on January 23, 2007. *See also* Exchange Response, *supra* note 6.

[15] Telephone conversation between Michael T. Bickford, Senior Vice President, Amex, and Jennifer L. Colihan, Special Counsel, Cyndi N. Rodriguez, Special Counsel, and Johnna B. Dumler, Special Counsel, Division of Market Regulation, Commission, on January 23, 2007.

[16] *Id.*

[17] *See* Exchange Response, *supra* note 6.

[18] Telephone conversation between Michael T. Bickford, Senior Vice President, Amex, and Jennifer L. Colihan, Special Counsel, Cyndi N. Rodriguez, Special Counsel, and Johnna B. Dumler, Special Counsel, Division of Market Regulation, Commission, on January 23, 2007.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55155; File No. SR–BSE–2006–49]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval To Proposed Rule Change as Modified by Amendment No. 1 Thereto, To Implement a Pilot Program To Quote Options in Pennies

January 23, 2007.

I. Introduction

On November 17, 2006, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Boston Options Exchange (''BOX'') Rules to permit certain option classes to be quoted in pennies on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on November 27, 2006.[3] The Commission received no comment letters on the proposed rule change. On January 5, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposal

BOX proposes to amend its rules to permit certain option classes to be quoted in pennies during a six-month pilot (''Penny Pilot Program''), which would commence on January 26, 2007. Specifically, the Exchange proposes to amend Section 6 (''Minimum Trading Increments'') and to add a new section, Section 33, (''Penny Pilot Program'') to Chapter V (''Doing Business on BOX'') of the BOX Rules.

Currently, all six options exchanges, including BOX, quote options in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than $3 per contract is $0.05 and the minimum price variation for quotations in options series that are quoted at $3 per contract or greater is $0.10. Under the Penny Pilot Program, beginning on January 26, 2007, market participants would be able to begin quoting in penny increments in certain series of option classes.

The Penny Pilot Program would include the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), (Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (SUNW); and Agilent Technologies, Inc. (A).

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, would be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs would be quoted in $0.01 increments for all options series.

BOX commits to deliver a report to the Commission during the fourth month of the pilot, which would be composed of data from the first three months of trading. The report would analyze the impact of penny pricing on market quality and options system capacity.

III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the implementation of a limited six-month Penny Pilot Program by BOX and the five other options exchanges will provide valuable information to the exchanges, the Commission and others about the impact of penny quoting in the options market. In particular, the Penny Pilot Program will allow analysis of the impact of penny quoting on: (1) Spreads; (2) transaction costs; (3) payment for order flow; and (4) quote message traffic.

The Commission believes that the thirteen options classes to be included in the penny pilot program represent a diverse group of options classes with varied trading characteristics. This diversity should facilitate analyses by the Commission, the options exchanges and others. The Commission also believes that the Penny Pilot Program is sufficiently limited that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information.

Nevertheless, because the Commission expects that the Penny Pilot Program will increase quote message traffic, the Commission has already approved the Exchange's proposal to reduce the number of quotations it disseminates.[7]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–BSE–2006–49), as modified by Amendment No. 1, be, and hereby is, approved on a six-month pilot basis, which will commence on January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1592 Filed 1–31–07; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54789 (November 20, 2006), 71 FR 68654.

[4] Amendment No. 1 proposed to replace Glamis Gold, which was delisted, with Agilent Tech, Inc. in the list of options classes permitted to be quoted in pennies. Amendment No. 1 is technical in nature, and the Commission is not publishing Amendment No. 1 for public comment.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] BOX submitted its proposed quote mitigation strategy in SR–BSE–2006–48. *See* Securities Exchange Act Release No. 55073 (January 9, 2007), 72 FR 2047 (January 17, 2006).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55176; File No. SR–CBOE–2007–08]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of a Pilot Program That Increases Position and Exercise Limits for Options on the iShares® Russell 2000® Index Fund

January 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by CBOE. On January 22, 2007, CBOE submitted Amendment No. 1 to the proposed rule change. CBOE has filed the proposal pursuant to Section 19(b)(3)(A) 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, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rule 4.11 to exempt options on the iShares® Russell 2000® Index Fund (''IWM'') from the position and exercise limits provided for under the Rule 4.11 Pilot Program and to increase the standard position and exercise limits for IWM as part of a six-month pilot (''Rule 4.11 IWM Pilot Program''). The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *http://www.cboe.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, CBOE 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. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretation and Policy .07 to Rule 4.11 on a six-month pilot basis to exempt options on IWM from the Rule 4.11 Pilot Program. Under the Rule 4.11 Pilot Program, the position and exercise limits for IWM would be reduced on January 22, 2007 from 500,000 to 250,000 contracts. The Exchange now proposes to allow position and exercise limits for options on IWM to remain at 500,000 contracts on a pilot basis, from January 22, 2007 through July 22, 2007.

In June 2005, as a result of a 2-for-1 stock split, the position limit for IWM options was temporarily increased from 250,000 contracts (covering 25,000,000 shares) to 500,000 contracts (covering 50,000,000 shares). At the time of the split, the furthest IWM option expiration date was January 2007. Therefore, the temporary increase of the IWM position limit will revert to the pre-split level (as provided for in connection with the Rule 4.11 Pilot Program) of 250,000 contracts after expiration in January 2007, or on January 22, 2007.[5]

The Exchange believes that a position limit of 250,000 contracts is too low and may be a deterrent to the successful trading of IWM options. Importantly, options on IWM are 1/10th the size of options on the Russell 2000® Index (''RUT''), which have a position limit of 50,000 contracts.[6] Traders who trade IWM options to hedge positions in RUT options are likely to find a position limit of 250,000 contracts in IWM options too restrictive and insufficient to properly hedge. For example, if a trader held 50,000 RUT options and wanted to hedge that position with IWM options, the trader would need—at a minimum-500,000 IWM options to properly hedge the position. Therefore, the Exchange believes that a position limit of 250,000 contracts is too low and may adversely affect market participants' ability to provide liquidity in this product.

Additionally, IWM options have grown to become one of the largest options contracts in terms of trading volume. For example, the volume in options on IWM set a new single-day record on June 8, 2006, when 760,803 contracts (120,229 calls and 640,574 puts) traded on that day. This record level volume beat the previous single-day high of 727,521 contracts on May 17, 2006. Further, over the previous six months, the average daily CBOE trading volume of IWM options has been 187,190 contracts and a total of 23,960,382 contracts have traded on the Exchange.

As a result, the Exchange proposes that options on IWM be subject to position and exercise limits of 500,000 contracts on a pilot basis to run from January 22, 2007 through July 22, 2007.[7] The Exchange believes that increasing position and exercise limits for IWM options will lead to a more liquid and more competitive market environment for IWM options that will benefit customers interested in this product.

The Exchange would require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the IWM option class, for its own account or for the account of a customer report certain information.[8] This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge, and if applicable, the collateral used to carry the position. Exchange market-makers (including DPMs) would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for IWM options.[9]

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[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).

[5] *See* CBOE Research Circular #RS05–380, at 12.

[6] *See* CBOE Rule 24.4(a); *see also* Securities Exchange Act Release Nos. 45309 (January 18, 2002), 67 FR 3757 (January 25, 2002) (SR–CBOE–2001–44) (increase of position and exercise limits to 300,000 for QQQ options); 47346 (February 11, 2003), 68 FR 8316 (February 20, 2003) (SR–CBOE–2002–26) (increase of position and exercise limits to 300,000 for DIA options); and 51041 (January 14, 2005), 70 FR 3408 (January 24, 2005) (SR–CBOE–2005–06) (increase of position and exercise limits for options on Standard and Poor's Depositary Receipts® from 75,000 to 300,000).

[7] Pursuant to Interpretation and Policy .02 to CBOE Rule 4.12, the exercise limit established under Rule 4.12 for IWM options shall be equivalent to the position limit prescribed for IWM options in Interpretation and Policy .07 under Rule 4.11. The increased exercise limits would only be in effect during the pilot period, to run from January 22, 2007 through July 22, 2007. *See* Amendment No. 1 to the proposed rule change.

[8] *See* CBOE Rule 4.13(b).

[9] *See* CBOE Rule 4.13(a).

[10] 15 U.S.C. 78f(b)(5).

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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit position and exercise limits for options on IWM to remain at 500,000 option contracts for a six-month pilot period. For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.[15]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii). 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 has decided to waive the five-day pre-filing notice requirement.

[14] *Id.*

[15] 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).

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–CBOE–2007–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–08. 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. Copies of the filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–08 and should be submitted on or before February 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1580 Filed 1–31–07; 8:45 am]

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[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55154; File No. SR–CBOE–2006–92]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto, Relating to the Penny Pilot Program

January 23, 2007.

I. Introduction

On November 8, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to permit certain option classes to be quoted in pennies on a pilot basis. The proposed rule change was published for comment in the **Federal Register** on November 29, 2006.[3] The Commission received one comment letter on the proposed rule change.[4] On January 9, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Exchange responded to the comment letter on January 10, 2007.[6] This order approves the proposed rule change as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54805 (November 21, 2006), 71 FR 69151.

[4] *See* letter to Nancy M. Morris, Secretary, Commission, from Christopher Nagy, Chair, Securities Industry and Financial Markets Association (''SIFMA'') Options Committee, dated December 20, 2006 (''SIFMA Letter'').

[5] Amendment No. 1 revised the Regulatory Circular CBOE will distribute to its members to reflect the replacement of Glamis Gold, which was delisted, with Agilent Tech, Inc. in the list of options classes permitted to be quoted in pennies. Amendment No. 1 is technical in nature, and the Commission is not publishing Amendment No. 1 for public comment.

[6] *See* letter to Nancy M. Morris, Secretary, Commission, from Patrick Sexton, Associate General Counsel, CBOE, dated January 10, 2007 (''CBOE Letter'').

II. Description of the Proposal

A. Scope of the Penny Pilot Program

CBOE proposes to amend its rules to permit certain option classes to be quoted in pennies during a six-month pilot (''Penny Pilot Program''), which would commence on January 26, 2007. Specifically, proposed CBOE Rule 6.42 would include a subparagraph stating that decimal increments for bids and offers for all series of option classes participating in the Penny Pilot Program will be announced by Regulatory Circular. The Regulatory Circular would set forth the parameters of the Penny Pilot Program.

Currently, all six options exchanges, including CBOE, quote options in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than $3 per contract is $0.05 and the minimum price variation for quotations in options series that are quoted at $3 per contract or greater is $0.10. Under the Penny Pilot Program, beginning on January 26, 2007, market participants would be able to begin quoting in penny increments in certain series of option classes.

The Penny Pilot Program would include the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), (Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (SUNW); and Agilent Tech, Inc. (A). The Exchange would communicate the list of options to be included in the Penny Pilot Program to its membership via Regulatory Circular.

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, would be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs would be quoted in $0.01 increments for all options series.

CBOE commits to deliver a report to the Commission during the fourth month of the pilot, which would be composed of data from the first three months of trading. The report would analyze the impact of penny pricing on market quality and options systems capacity.

CBOE also proposes to amend CBOE Rule 6.54 relating to accommodation liquidations (''cabinet trades'') to state that the rule is not applicable to trading in option classes participating in the Penny Pilot Program. Currently, CBOE Rule 6.54 sets forth the terms and conditions in which cabinet trades can be executed on CBOE. Because cabinet trades involve orders priced at $1 per option contract, the specific terms and conditions for cabinet trading are not applicable to option classes participating in the Penny Pilot Program.

B. Quote Mitigation Strategies

To mitigate quote message traffic, CBOE has represented to the Commission that it has already implemented or intends to implement the following quote mitigation strategies.

- *Limitation on Messages.* Pursuant to CBOE Rule 6.23A, CBOE currently limits the number of messages sent by members accessing CBOE electronically in order to protect the integrity of the Hybrid Trading System. Limiting the number of messages sent by members accessing CBOE electronically reduces the number of quotations sent by CBOE to the Options Price Reporting Authority (''OPRA'').
- *Amendment to Market-Maker Obligations.* CBOE proposes to amend CBOE Rule 8.7 to modify the continuous electronic quoting obligation of Market-Makers and Remote Market-Makers (''RMMs''). Currently, as set forth in CBOE Rule 8.7(d)(ii) and (e), Market-Makers and RMMs, respectively, are obligated to provide continuous electronic quotes in 60% of the series of his/her appointed option class. CBOE proposes to amend these obligations to provide that Market-Makers and RMMs shall provide continuous electronic quotes in 60% of the series of his/her appointed class that have a time to expiration of less than nine months. CBOE believes that excluding series that are nine months or more to expiration, *i.e.*, LEAPS, from Market-Makers' and RMMs' continuous quoting obligations should reduce the number of quotes CBOE disseminates to OPRA, while continuing to impose upon Market-Makers and RMMs significant quoting obligations. CBOE also notes that this proposed change is consistent with CBOE Rule 5.8 which provides that the continuity rules do not apply to option series until the time to expiration is less than nine months.[7]
- *Delisting Policy.* CBOE is adopting the following delisting policy: equity option classes with national average daily volume (''ADV'') of less than 20 contracts will be delisted.
- *Oversight of Member Quoting.* CBOE continuously monitors the quotation activity of its members submitting electronic quotations to CBOE, and regularly notifies any member that appears to be disseminating significantly more quotations than other members. CBOE also regularly communicates with independent vendors who provide quotation services to members to encourage the vendors to modify their systems to provide efficient quotation systems and to alert them whenever it appears that users of their system appear to be submitting significantly more quotations than other members.[8]

III. Discussion

After careful review of the proposal and consideration of SIFMA's comment letter and the Exchange's response thereto, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the implementation of a limited six-month Penny Pilot Program by CBOE and the five other options exchanges will provide valuable information to the exchanges, the Commission and others about the impact of penny quoting in the options market. In particular, the Penny Pilot Program will allow analysis of the impact of penny quoting on: (1)

[7] The Commission recently approved a similar proposal from the Philadelphia Stock Exchange. See Securities Exchange Act Release No. 54648 (October 24, 2006), 71 FR 63375 (October 30, 2006) (SR–Phlx–2006–52).

[8] In addition to the quote mitigation strategies discussed above, to encourage more efficient quoting by its members, the Exchange filed a proposed rule change on November 20, 2006, that assesses an additional monthly fee, commencing on February 1, 2007, on all Market Makers who submit electronic quotes to the Exchange of $.03 per 1,000 quotes in excess of 1,000,000 quotes. The proposed rule change was immediately effective under Section 19(b)(3)(A) of the Act. *See* Securities Exchange Act Release No. 54804 (November 21, 2006), 71 FR 69150 (November 29, 2006) (File No. SR–CBOE–2006–98).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

Spreads; (2) transaction costs; (3) payment for order flow; and (4) quote message traffic.

The Commission believes that the thirteen options classes to be included in the penny pilot program represent a diverse group of options classes with varied trading characteristics. This diversity should facilitate analyses by the Commission, the options exchanges and others. The Commission also believes that the Penny Pilot Program is sufficiently limited that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information.

Nevertheless, because the Commission expects that the Penny Pilot Program will increase quote message traffic, the Commission is also approving the Exchange's proposals to reduce the number of quotations it disseminates.

SIFMA commented on the CBOE's quote mitigation proposal.[11] SIFMA recommends that all six of the option exchanges adopt a comprehensive and uniform quote mitigation strategy. In particular, SIFMA strongly supports the adoption of the ''holdback timer'' mitigation proposal as the most efficient means of reducing quotation traffic. SIFMA, however, expressed concern that the lack of uniformity among the quote mitigation proposals adopted by the exchanges will impose a burden on member firms and cause confusion for market participants, especially retail investors.

Although SIFMA urges the adoption of a uniform and comprehensive approach to quote mitigation, it does not oppose CBOE's quote mitigation proposals. In fact, SIFMA acknowledges that certain of CBOE's proposals, such as notifying members whose quote activity suggests systems malfunctions or wrong settings and delisting inactive series can contribute to quote mitigation. SIFMA, however, expressed its belief that these proposals do not go far enough to resolve the industry's concerns regarding systems capacity.

Although the Commission supports efforts to implement a uniform, industry-wide quote mitigation plan, it does not believe such efforts preclude individual exchanges from initiating their own quote mitigation strategies. The Commission agrees with CBOE that its proposed quote mitigation strategies will not lead to confusion among market participants.[12]

[11] *See* SIFMA Letter, *supra* note 4.

[12] *See* CBOE Letter, *supra* note 6.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–2006–92), as modified by Amendment No. 1, be, and hereby is, approved on a six month pilot basis, which will commence on January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1586 Filed 1–31–07; 8:45 am]

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55172; File No. SR–CBOE–2006–110]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of CBOE Stock Exchange, LLC

January 25, 2007.

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 26, 2006, the Chicago Board Options Exchange, Incorporated (the ''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. CBOE filed Amendment No. 1 to the proposed rule change on January 10, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to establish CBOE Stock Exchange (''CBSX'') as a facility, as that term is defined in Section 3(a)(2) of the Act,[3] of CBOE. CBSX will administer a fully automated marketplace for the trading of securities other than options by CBOE members. CBSX will be operated by CBOE Stock Exchange, LLC (''CBSX LLC''), a Delaware limited liability company. In this filing, CBOE submitted to the Commission the First Amended and Restated Operating Agreement (''Operating Agreement'') of CBSX LLC. The Certificate of Formation and the Operating Agreement are the source of CBSX LLC's governance and operating authority, and therefore, function in a similar manner as articles of incorporation and bylaws for a corporation. Additionally, CBOE proposes to adopt Rule 3.32 pertaining to ownership concentration and affiliation limitations.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), at the Office of the Secretary, CBOE, and at the Commission's Public Reference Room. The text of the proposed rule change is also available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE is a registered national securities exchange under Section 6 of the Act and a self-regulatory organization (''SRO''). CBOE indicates that CBSX will be a facility of CBOE, subject to self-regulation by CBOE and oversight by the SEC. CBOE will act as the SRO for CBSX pursuant to a Services Agreement to be entered into between CBOE and CBSX LLC. CBOE will have the primary regulatory responsibility for the activities of CBSX. CBOE represents that it has adequate funds to discharge all regulatory functions related to the facility that it has undertaken to perform under the Services Agreement.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78c(a)(2).

[4] CBOE represents that CBSX LLC will not be entitled to any revenue generated in connection with penalties, fines, and regulatory fees that may be assessed by CBOE against CBOE members in connection with trading on CBSX. Rather, all

Continued

In this filing, CBOE submitted to the SEC the Certificate of Formation and the Operating Agreement of CBSX LLC, which specifically relate to the control and governance of CBSX LLC that would ensure that CBOE has the authority within CBSX LLC to maintain CBOE's responsibility for all regulatory functions related to CBSX. The Operating Agreement provides that CBOE and the SEC would have regulatory authority over the CBSX LLC owners and the members of CBSX LLC's Board of Directors. CBOE will submit separate rule filings to establish rules relating to listing, membership and trading on CBSX.[5] Because the primary purpose of this rule filing is to focus on those provisions that are directly related to CBSX LLC's governance and ownership, and CBOE's authority for all regulatory functions of the CBSX, the Exchange's discussion in this filing will be limited to those relevant provisions of the Operating Agreement.

CBSX LLC

As a limited liability company, ownership of CBSX LLC is represented by limited liability membership interests in CBSX LLC. The holders of such interests are referred to as ''Owners'' in this rule filing.[6] Initially, there are five Owners of CBSX LLC. CBOE is one of the Owners of CBSX LLC, and owns all ''Series A'' Voting Shares[7] of CBSX LLC, representing (50%) of CBSX LLC.[8] The other four Owners and their respective ownership interests are: VDM Chicago, LLC (20%); LaBranche & Co., Inc. (10%); IB Exchange Corp. (10%); and Susquehanna International Group, LLP. (10%). Each of these four Owners owns ''Series B'' Voting Shares of CBSX LLC.

Under Section 3.2 of the Operating Agreement, the CBSX LLC Board of Directors may authorize the issuance of ''Series C'' Non-Voting Restricted Shares[9] from time to time to employees, consultants, or officers of CBSX LLC, or any other person, each of whom will become a Management Owner[10] of CBSX LLC.

As provided in Section 8.9 of the Operating Agreement, the outstanding Series A Voting Shares shall, in the aggregate (and without being deemed to be a voting trust), be entitled to a number of votes equal to 50% of the total number of Voting Shares outstanding, on each matter submitted to a vote of the Owners. Each outstanding Series B Voting Share shall be entitled to one vote on each matter submitted to a vote of the Owners. The Series C Non-Voting Restricted Shares shall not be entitled to vote on any matter submitted to a vote of the Owners.

Governance of CBSX LLC

Pursuant to Section 9.1 of the Operating Agreement, CBSX LLC will be managed by or under the direction of its own Board of Directors. Section 9.2 of the Operating Agreement provides that the Board of Directors will consist of 9 Directors and also provides how the composition of the Board of Directors shall be determined. Each Owner owning Series B Voting Shares representing at least five percent (5%) of the aggregate ''Percentage Interests''[11] of CBSX LLC shall be entitled to designate one Director. The Owners of Series A Voting Shares (currently, CBOE) shall collectively be entitled to designate a number of Directors equal to the aggregate number of Directors designated by the Owners owning Series B Voting Shares representing at least five percent (5%) of the aggregate Percentage Interests of CBSX LLC. The Directors then shall designate one additional Director from the executive management of CBSX LLC.

Thus, initially, VDM Chicago, LLC, LaBranche & Co., Inc., IB Exchange Corp., and Susquehanna International Group, LLP will each be entitled to designate one Director. CBOE, as the Owner of the Series A shares, will be entitled to designate four Directors. The eight Directors will then designate one additional Director from among the executive management of CBSX LLC.

Section 9.2 of the Operating Agreement also provides that as long as CBSX remains a facility of CBOE, CBOE shall have the right to retain/designate one Director in the event CBOE is no longer otherwise entitled to designate any Directors pursuant to Section 9.2 of the Operating Agreement, whether or not CBOE maintains any Percentage Interest or is admitted to CBSX as an Owner.

Under Section 9.3 of the Operating Agreement, a Director appointed pursuant to Section 9.2 of the Operating Agreement shall serve until his or her earlier death, resignation, or removal in a manner permitted by applicable law or the Operating Agreement, or, with respect to Directors designated by Owners of Series B Voting Shares, until such time as the Owner designating such Director ceases to own a Percentage Interest representing at least five percent (5%) of the aggregate Percentage Interests of CBSX LLC. In such latter event, upon the termination of service of such a Series B-designated Director, the service of a single Director designated by the Owner(s) of the Series A Voting Shares (identified by the Series A Owner(s) in their sole discretion) shall simultaneously terminate.

Section 1.8 of the Operating Agreement provides that notwithstanding anything contained in

regulatory fines, penalties and fees assessed against and paid by CBOE members to CBOE in connection with trading on CBSX shall remain with CBOE.

[5] The Commission notes that on December 18, 2006, the Exchange filed a proposed rule change relating to a permit program for CBSX. *See* Securities Exchange Act Release No. 54987, 71 FR 78481 (December 29, 2006). The Commission also notes that on December 29, 2006, the Exchange filed a proposed rule change to establish the equity trading rules for CBSX. *See* Securities Exchange Act Release No. 55034, 72 FR 1350 (January 11, 2007).

[6] ''Owner'' means a limited liability company ''member'' as that term is defined in § 18–101(11) of the Delaware Limited Liability Company Act (''DLLCA''), and shall include each Voting Owner and each Management Owner, but only so long as such person is shown on CBSX's books and records as the owner of at least one (1) Share (or fraction of one (1) Share). ''Owner'' shall include a ''Substituted Owner'' as defined in Section 6.5(a) of the Operating Agreement, but only upon compliance with all of the requirements of Sections 6.4 and 6.5 of the Operating Agreement. For purposes of clarity, no person shall become an ''Owner'' as to any Shares, if the acquisition of those Shares will require a change of ownership notice to the SEC, or will constitute a proposed rule change subject to the requirements of the rule filing process of Section 19 of the Act, until all of the requirements of such notice or rule filing process have been accomplished and, if necessary, approved by the SEC. *See* Section 2.1(16) of the Operating Agreement.

[7] ''Voting Shares'' means those Shares entitled to vote on matters submitted to the Owners, which Voting Shares are held by the Voting Owners. *See* Section 2.1(27) of the Operating Agreement.

[8] As noted in Section 3.2 of the Operating Agreement, it is the intention of the Owners that no other members of CBSX LLC (other than Affiliates of CBOE) be owners of Series A Voting Shares, and that no additional Series A Voting Shares be authorized, created or issued for such purpose; provided however, that this provision is not intended to limit or restrict any rights of CBOE to transfer any of its Series A Voting Shares with the prior approval of the SEC as provided for in Article VI, including Section 6.14 of the Operating Agreement, or any other provision thereof, or any rights to be acquired by a transferee of those Shares as provided therein.

[9] ''Non-Voting Restricted Share'' means a Share held by a Management Owner containing the voting limitations and other restrictions described in the Operating Agreement. *See* Section 2.1(15) of the Operating Agreement.

[10] ''Management Owner'' means a natural person who is identified on Exhibit A of the Operating Agreement (Exhibit 5C to the proposed rule change) as a Management Owner, who subsequently becomes a Management Owner pursuant to the provisions of Section 3.2(c) of the Operating Agreement, or who is a transferee or assignee of Non-Voting Restricted Shares (other than a Voting Owner). *See* Section 2.1(13) of the Operating Agreement.

[11] ''Percentage Interest'' means with respect to an Owner, a fraction (expressed as a percentage) determined from time to time, the numerator of which is the number of all Shares held by such Owner and the denominator of which is the sum of all Shares held by all Owners. *See* Section 2.1(17) of the Operating Agreement.

the Operating Agreement to the contrary, so long as CBSX is a facility of CBOE, in the event that CBOE, in its sole discretion, determines that any action, transaction or aspect of an action or transaction, is necessary or appropriate for, or interferes with, the performance or fulfillment of CBOE's regulatory functions, its responsibilities under the Act or as specifically required by the SEC (collectively, ''Regulatory Requirements''), (i) CBOE's affirmative vote will be required to be included in order to constitute a ''Super Majority Vote of the Owners,'' [12] (ii) without CBOE's affirmative vote no such action, transaction or aspect of an action or transaction shall be authorized, undertaken or effective, and (iii) CBOE shall have the sole and exclusive right to direct that any such required, necessary or appropriate act, as it may determine in its sole discretion, to be taken or transaction be undertaken by or on behalf of CBSX LLC without regard to the vote, act or failure to vote or act by any other party in any capacity.

Section 5.6 of the Operating Agreement states that except as otherwise specifically provided by the Operating Agreement or required by the DLLCA or by the SEC pursuant to the Act, no Owner shall have the power to act for or on behalf of, or to bind, CBSX LLC.

Section 5.7 of the Operating Agreement provides that CBSX LLC, and to the extent that it relates to CBSX LLC, each Owner, agrees to comply with the federal securities laws and the rules and regulations thereunder; to cooperate with the SEC and CBOE pursuant to their regulatory authority and the provisions of the Operating Agreement; and to engage in conduct that fosters and does not interfere with CBSX LLC's ability 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.

Additionally, Section 5.7 of the Operating Agreement states that, after appropriate notice and opportunity for hearing, the Board, with the approving vote of both CBOE, in exercise of its authority under Section 1.8 of the Operating Agreement, and a majority vote of the Owners, excluding the vote of the Owner subject to sanction, may suspend or terminate an Owner's voting privileges or membership in CBSX LLC under the Operating Agreement: (i) In the event such Owner is subject to a ''statutory disqualification,'' as defined in Section 3(a)(39) of the Act; or (ii) in the event such Owner has violated any provision of the Operating Agreement implicating any federal or state securities law; or (iii) if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

Section 9.13 of the Operating Agreement also provides that a Director may be removed for cause by the act of a ''Majority in Interest of the Owners'' [13] at a meeting of the Owners called expressly for the purpose of removing the Director. For these purposes, ''for cause'' shall mean: (1) The Director has (A) committed a willful serious act of dishonesty, such as fraud, embezzlement or theft, (B) committed or attempted any act against CBSX LLC intending to enrich himself or herself at the expense of CBSX LLC, or (C) made an unauthorized use or disclosure of ''Confidential Information;'' [14] (2) the Director has been charged with an act constituting a felony; (3) the Director has engaged in conduct that has caused serious injury, monetary or otherwise, to CBSX LLC; or (4) the Director, in carrying out his or her duties, has been guilty of negligence or willful misconduct.

Under Section 9.14 of the Operating Agreement, the Board of Directors may designate one or more committees, which shall be comprised of individuals chosen by the Board, and may at the Board's discretion include non-Board members. Any such committee, to the extent provided in the resolution, shall have the authority and power to exercise such functions as may be delegated by the Board, which delegation may be revoked by the Board at any time in its discretion and any action taken pursuant to such delegation may be modified, suspended, overruled or revoked by the Board at any time in its discretion.

Section 9.15(a) of the Operating Agreement contains limitations on the authority of the Board of Directors. Specifically, Section 9.15(a) of the Operating Agreement provides that notwithstanding any contrary provision of this Agreement, and subject always to CBOE's rights to act under Section 1.8 of the Operating Agreement and the final provision of Section 9.15(a) of the Operating Agreement, it shall require the affirmative action of the Board, acting on behalf of CBSX LLC, the additional prior approving vote of CBOE, in exercise of its authority under Section 1.8 of the Operating Agreement, and a Super Majority of the Owners, to cause CBSX LLC to:

- Enter into a material new line of business or exit or change a material line of business outside the scope of the business contemplated in Section 1.6 of the Operating Agreement;
- Enter into any transaction with an Owner or Affiliate [15] of an Owner outside the ordinary course of business or requiring payments in excess of $1 million;
- Make any material amendment to the organizational documents of CBSX LLC;
- Engage in any liquidation, dissolution, reorganization or recapitalization;
- Enter into licensing or other contractual arrangements, including without limitation, those providing for the encumbrance of assets or properties,

[12] ''Super Majority Vote of the Owners'' means, subject to the provisions of Section 1.8 of the Operating Agreement as to Regulatory Requirements, the affirmative vote of both (i) all of the Owners of the Series A Voting Shares at the time, and (ii) any two (2) of the Initial Owners of Series B Voting Shares who then retain ownership of Series B Voting Shares. *See* Section 2.1(25) of the Operating Agreement.

[13] ''Majority in Interest of the Owners'' means the affirmative vote of more than 50% of the Voting Shares held solely by the Voting Owners. *See* Section 2.1(12) of the Operating Agreement.

[14] ''Confidential Information'' means (A) information relating to the terms of any contract, agreement or other relationship between CBSX LLC and a third party, an Owner, an Affiliate of CBSX LLC or an Owner, or any other person, (B) information relating to the terms of the Operating Agreement or any other agreement between or among CBSX LLC, and an Owner, an Affiliate of CBSX LLC or an Owner, or any other person (C) financial information about CBSX LLC, an Owner, an Affiliate of CBSX LLC or an Owner, (D) any process, system or procedure with which or whereby CBSX LLC or any Owner or Affiliate of an Owner does business, (E) any trade secrets, confidential know-how or designs, formulae, plans, devices, business information, software, systems, technology, financial data or material (whether or not patented or patentable) of CBSX LLC, or an Owner or Affiliate of CBSX LLC or an Owner, and (F) any confidential member or user or customer lists of CBSX LLC, or an Owner or Affiliate of CBSX LLC or an Owner, in each case to which a party hereto becomes privy or learns of by reason of the Operating Agreement, discussions or negotiations relating to the Operating Agreement or the relationship of the parties contemplated hereby. *See* Section 2.1(6), and Section 15.2 of the Operating Agreement.

[15] ''Affiliate'' means with respect to any person, any other person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such person. As used in this definition, the term ''control'' means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise with respect to such person. *See* Section 2.1(1) of the Operating Agreement.

outside the ordinary course of business, or requiring payments in excess of $1 million;

- Grant Board seats to new Owners or alter Board seat allocations for or among existing Owners (which action will require compliance with the rule filing process of Section 19 of the Act as well);
- Issue additional equity securities of CBSX LLC or securities convertible into equity securities of CBSX LLC, other than as provided for in Section 3.2(c) and (d) of the Operating Agreement;
- Declare or pay dividends or distributions, or repurchase any securities of CBSX LLC (other than Series C Non-Voting Restricted Shares), other than those that apply proportionately to all Owners;
- Enter into any merger, consolidation or acquisition or sale of material assets or ownership interests;
- Undertake an initial public offering;
- Change senior level management, including entering into, terminating or amending employment agreements with management and key employees;
- Materially change CBSX LLC's business model;
- Change auditors or accounting policies, practices or procedures;
- Change the status or registration of CBSX LLC as a facility of CBOE (which action will require compliance with the rule filing process of Section 19 of the Act as well);
- Create or designate any new or additional class or series of Shares or increase the authorized number of Shares of any class or series;
- Approve or authorize the acquisition by any person or group of a greater than 20% Percentage Interest in CBSX LLC (which action will require compliance with Section 6.14 of the Operating Agreement as well); or
- Amend, or be bound by or recognize an amendment of, the provisions of Section 9.15(a) of the Operating Agreement in any way.

Section 9.15(a) of the Operating Agreement further provides that without the affirmative vote of CBOE if exercised under Section 1.8 of the Operating Agreement, no such action, transaction or aspect of an action or transaction shall be authorized, undertaken or effective. Additionally, with respect to any matter, including those listed above, that implicates Regulatory Requirements, CBOE shall always have the sole discretion and authority to cause any action to be taken by and on behalf of CBSX LLC, as provided for in Section 1.8 of the Operating Agreement, without regard to the foregoing requirements of Section 9.15(a) of the Operating Agreement.

CBOE believes that the foregoing limitations on the authority of the CBSX LLC Board enable CBOE to have authority over the actions of CBSX LLC especially as they relate to regulatory responsibilities.

Under Section 9.15(c) of the Operating Agreement, each Director shall agree to comply with the federal securities laws and the rules and regulations thereunder, and to cooperate with the SEC and CBOE pursuant to their regulatory authority and the provisions of the Operating Agreement. In addition, each Director will take into consideration whether any actions taken or proposed to be taken as a Director for or on behalf of CBSX LLC, or any failure or refusal to act (including a failure to be present to constitute a quorum, or to reasonably provide an affirmative vote or consent) would constitute interference with CBOE's regulatory functions and responsibilities in violation of the Operating Agreement or the Act. Interference shall be determined reasonably and in good faith by the Board designees of CBOE, which determination will be final and binding.

Section 9.16 of the Operating Agreement also provides that in serving as a Director, each Director agrees to comply with the federal securities laws and the rules and regulations thereunder; to cooperate with the SEC and CBOE pursuant to their regulatory authority and the provisions of the Operating Agreement; and to engage in conduct that fosters and does not interfere with CBSX LLC's ability 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. Moreover, after appropriate notice and opportunity for hearing, the Board, with the approving vote of both CBOE in exercise of its authority under Section 1.8 of the Operating Agreement, and a majority vote of the Owners, excluding the vote of the Owner whose Director designee is subject to sanction, may suspend or terminate a Director's service as such to CBSX LLC under the Operating Agreement: (i) In the event such Director is subject to a ''statutory disqualification,'' as defined in Section 3(a)(39) of the Act; or (ii) in the event such Director has violated any provision of the Operating Agreement implicating any federal or state securities law; or (iii) if the Board determines that such action is necessary or appropriate in the public interest or for the protection of investors.

CBOE believes that these provisions, including Sections 5.7, 9.15(c) and 9.16 of the Operating Agreement, would require each CBSX LLC Director to adhere to regulatory responsibilities in that they must comply with federal securities laws and the rules and regulations promulgated thereunder, and cooperate with the SEC and CBOE pursuant to their regulatory authority.

Changes in Ownership of CBSX LLC

Pursuant to Section 6.1 of the Operating Agreement, an Owner shall have the right to assign Shares only by a written assignment, the terms of which do not contravene any provision of this Operating Agreement, and which has been duly executed by the assignor and assignee, received by the Board, and recorded on the books of CBSX LLC. For all purposes of the Operating Agreement, the terms ''transfer'' and ''assign,'' and all derivatives or variants of those terms, include any transfer, disposition, sale, gift, bequest, pledge, encumbrance, hypothecation, exchange or other act whether voluntary or involuntary, by operation of law or otherwise, whereby an Owner's ownership, interest, or rights in any Shares are disposed of, impaired, or in any way affected.

Section 6.2 of the Operating Agreement states that, subject to the requirements of Article VI of the Operating Agreement, an Owner can assign any portion of its shares to a ''Permitted Transferee.'' A ''Permitted Transferee'' means (i) as to any Owner, an Affiliate of such Owner, and not the Affiliate of any other Owner, (ii) as to VDM Chicago, LLC during the period specified in the Operating Agreement, Mill Bridge IV, LLC or CBONP, LLC,[16] or (iii) as to any Owner that is an individual (A) such Owner's estate, heirs or beneficiaries, (B) any guardian or conservator appointed for such Owner's estate, or (C) any trust for the benefit of such Owner or such Owner's immediate family members, or to any limited partnership or limited liability company in which the non-controlling partners or members, as the case may be, are members of such Owner's immediate family, and so long as the Owner is the sole trustee, general partner or manager of such trust, limited

[16] Prior to SEC approval of this rule filing, VDM Chicago Holdings, LLC, Mill Bridge IV, LLC, and CBONP, LLC will execute an Indirect Controlling Party Amendment to the Operating Agreement, pursuant to Section 15.16 of the Operating Agreement.

partnership or limited liability company, as the case may be. A Permitted Transferee shall become a Substituted Owner only if and as provided in Sections 6.4 and 6.5 of the Operating Agreement.

Section 6.3 of the Operating Agreement further provides that no Owner may sell, assign, give, pledge, or otherwise voluntarily transfer, or involuntarily transfer by bankruptcy, death or disability, shares to a person other than a Permitted Transferee, and no shares shall be transferred on the books of CBSX LLC other than a transfer to a Permitted Transferee, unless prior to that transfer, an Owner, or, in the case of an involuntary transfer, the legal representative or successor in interest of an Owner (the ''Transferring Owner''), first notifies CBSX LLC and all voting Owners (but not Management Owners) in writing of the number of shares that the Transferring Owner proposes to transfer pursuant to a bona fide offer received by the Transferring Owner, and otherwise complies with restrictions and conditions in Article VI pertaining to sale and transfer of shares.

Under Section 6.4 of the Operating Agreement, a Permitted Transferee and a transferee having purchased Shares after the Transferring Owner has complied with the right of first refusal set forth in Section 6.3(a) and (b) of the Operating Agreement, shall become a Substituted Owner,[17] provided that (i) the Permitted Transferee or other transferee executes a written acceptance and adoption of all terms and provisions of the Operating Agreement, as the same may have been amended, and (ii) all of the applicable requirements of a change of ownership notice to the SEC as required by Section 6.13 of the Operating Agreement, or a proposed rule change subject to the requirements of the rule filing process of Section 19 of the Act as required by Section 6.14 of the Operating Agreement have been accomplished and, if necessary, approved by the SEC.

Section 6.7 of the Operating Agreement provides that no transfer or assignment of any shares may be made if, in the written opinion of counsel for CBSX LLC: (1) Such transfer or assignment, together with all other transfers and assignments of shares within the preceding twelve months, would result in a termination of CBSX LLC for purposes of Internal Revenue Code § 708 or any comparable provision then in effect; (2) such transfer or assignment would violate the Securities Act of 1933, as amended, or applicable state securities or Blue Sky laws, or any other applicable provision of law in any respect; or (3) such transfer or assignment would cause CBSX LLC to be treated as an association taxable as a corporation rather than as a partnership for federal, state or local income tax purposes.

Ownership/Voting Limitations

Section 6.12 of the Operating Agreement contains ownership concentration limitations. Specifically, Section 6.12(a) of the Operating Agreement provides that no person (other than CBOE), either alone or together with its Affiliates, at any time, may be an Owner, directly or indirectly, of record or beneficially, of an aggregate amount of Shares that would result in a greater than twenty percent (20%) Percentage Interest in CBSX LLC (the ''Concentration Limitation''). Section 6.12(b) of the Operating Agreement states that the Concentration Limitation shall apply to each person (other than CBOE) unless and until: (i) Such person shall have delivered to the Board a notice in writing, not less than 45 days (or such shorter period as the Board shall expressly consent to) prior to the acquisition of any Shares that would cause such person (either alone or together with its Affiliates) to exceed the Concentration Limitation, of such person's intention to acquire such ownership; (ii) the Board shall have, in its sole discretion, consented to expressly permit such ownership; and (iii) such waiver shall have been filed with, and approved by, the SEC under Section 19(b) of the Act and shall have become effective thereunder. Section 6.12(c) of the Operating Agreement states that in exercising its discretion under Section 6.12(b) of the Operating Agreement, the Board shall have determined that (i) such beneficial ownership of Shares by such person, either alone or together with its Affiliates, will not impair the ability of CBSX LLC and the Board to carry out their functions and responsibilities, including but not limited to, under the Act, and is otherwise in the best interests of CBSX LLC and its Owners; (ii) such beneficial ownership of Shares by such person, either alone or together with its Affiliates, will not impair the ability of the SEC to enforce the Act; (iii) neither such person nor its Affiliates are subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act); and (iv) neither such person nor its Affiliates is a member of CBOE.

Section 6.13 of the Operating Agreement provides that beginning after SEC approval of this proposed rule change, CBSX LLC shall provide the SEC with written notice ten days prior to the closing date of any transaction that results in a person's Percentage Interest, alone or together with any Affiliate, meeting or crossing the threshold level of 5% or the successive 5% Percentage Interest levels of 10% and 15%.

Section 6.14 of the Operating Agreement provides that beginning after SEC approval of this proposed rule change, in addition to the notice requirement in Section 6.13 of the Operating Agreement, (i) any transfer that results in the acquisition and holding by any person, alone or together with any Affiliate, of an aggregate Percentage Interest level permitted by Section 6.12 of the Operating Agreement that meets or crosses the threshold level of 20% or any successive 5% Percentage Interest level (i.e., 25%, 30%, etc.); and (ii) any transfer of Series A Voting Shares to a Permitted Transferee of CBOE or any of its Affiliates, will constitute a proposed rule change that will be subject to the requirements of the rule filing process of Section 19 of the Act, subject to approval by the SEC, and CBSX LLC shall make all necessary filings with the SEC thereunder.

Under Section 8.10 of the Operating Agreement, in the event that, despite the Concentration Limitation prohibitions of Section 6.12 of the Operating Agreement, an Owner of Series B Voting Shares that is also a CBOE member owns more than 20% of the outstanding Voting Shares, alone or together with any Affiliate of such Owner (Shares owned in excess of 20% being referred to as ''Excess Shares''), the Owner and its designated Directors shall have no voting rights whatsoever, nor right to give any proxy in relation to a vote of the Owner, with respect to the Excess Shares held by such Owner. However, irrespective of whether such Owner or its designated Directors otherwise participate in a meeting in person or by proxy, such Owner's Excess Shares shall be counted for quorum purposes, and shall be counted as being voted on each matter in the same proportions as the Voting Shares held by the other Owners are voted (including any abstentions from voting).

CBOE believes that these provisions will prevent any person from exercising undue control over CBSX LLC and will

[17] ''Substituted Owner'' is a person admitted to all of the rights, and except as provided in the following sentence, who assumes all of the obligations, of an Owner who has made an assignment of shares in accordance with Section 6.4 of the Operating Agreement. Such obligations shall not include any obligation of the assignor to return to CBSX LLC or pay to a creditor, in accordance with Section 3.4 of the Operating Agreement, all or any part of a distribution that previously was made to the assignor. *See* Section 6.5 of the Operating Agreement.

protect the ability of CBOE, as well as other investors, to exercise its full ownership rights. By specifically imposing a voting limitation on any person other than CBOE that owns shares which represent in the aggregate more than 20% of the voting power then entitled to be cast, CBOE is ensuring that it is in all cases, able to maintain proper control over the exercise of its regulatory function in relation to CBSX LLC, and is not subject to influence that may be adverse to its regulatory responsibilities from any person who may own a substantial number of the outstanding shares. This provision and other related provisions relating to notice and rule filing requirements with respect to any person who acquires certain Percentage Interest levels in CBSX LLC will serve to protect the integrity of CBOE's self-regulatory responsibilities.

Regulatory Jurisdiction Over CBSX LLC and Its Owners

As noted earlier, CBOE will regulate CBSX as a facility of the Exchange. CBOE has responsibility under the Act for the CBSX facility. CBSX LLX, as owner and operator of the CBSX facility, will also be subject to the SEC's jurisdiction. In this regard, Section 6.15(a) of the Operating Agreement provides that the Owners acknowledge that to the extent they are directly related to CBSX LLC's activities, the books, records, premises, officers, directors, agents, and employees of the Owners shall be deemed to be the books, records, premises, officers, directors, agents, and employees of the Regulatory Services Provider [18] and its Affiliates for the purpose of and subject to oversight pursuant to the Act. Section 6.15(b) of the Operating Agreement additionally provides that the books, records, premises, officers, directors, agents, and employees of CBSX LLC shall be deemed to be the books, records, premises, officers, directors, agents, and employees of CBOE for the purpose of and subject to oversight pursuant to the Act.

Under Section 6.15(c) of the Operating Agreement, CBSX LLC, the Owners and the respective officers, directors, agents, and employees of each irrevocably submit to the jurisdiction of the U.S. federal courts, the SEC, and CBOE, for the purposes of any suit, action or proceeding pursuant to U.S. federal securities laws or the rules or regulations thereunder, directly arising out of, or directly relating to, CBSX LLC's activities, and hereby waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that they are not personally subject to the jurisdiction of the U.S. federal courts, SEC, or CBOE, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter thereof may not be enforced in or by such courts or agency, and, to the fullest extent permitted by law, waive the defense or application of any foreign secrecy or blocking statues or regulations with respect to the Owner, its officers, directors, agents and employees, that relate to CBSX LLC's activities or their participation therein or in connection therewith.

Section 6.15(d) of the Operating Agreement states that CBSX LLC and each Owner shall take such action as is necessary, unless otherwise provided for by law, written statement of policy, individual contract or otherwise, to ensure that the officers, directors, agents and employees of each consent in writing to the applicability of this provision with respect to CBSX LLC-related activities. Consent in writing to the provisions of this Section 16.15(d) of the Operating Agreement extends to the confidentiality provisions in Section 15.2 of the Operating Agreement.

Section 13.2 of the Operating Agreement provides, in part, that CBSX LLC's complete records and books of account shall be subject at all times to inspection and examination by CBOE and the SEC at no additional charge to CBOE and the SEC.

CBOE believes that these provisions will serve as notice to Owners that they will be subject to the jurisdiction of the U.S. federal courts, the SEC, and CBOE. It is important that regulatory cooperation is assured from all Owners, regardless of the Owner's business location, country of domicile or other circumstances which the SEC may deem to have the potential to be adverse to the regulatory responsibilities and interests of CBOE, the SEC or the U.S. federal courts.

Finally, Section 15.2 of the Operating Agreement generally provides that no Owner shall disclose any ''Confidential Information'' to any person or use any confidential information to the detriment of CBSX LLC or its Owners or for its own benefit or the benefit of others, except with the consent of the Board or as required by law or as requested by any governmental or regulatory authority (provided that such Owner shall notify the Board promptly of any request for information before disclosing it, if practicable and permitted by applicable law), and other than with respect to CBOE's communications with the SEC with respect to the conduct of CBSX LLC's business. Section 15.2 of the Operating Agreement further provides that nothing in the Operating Agreement shall be interpreted to limit or impede the rights of the SEC or CBOE to access and examine any Confidential Information pursuant to the U.S. federal securities laws and the rules thereunder, or to limit or impede the ability of an Owner or an officer, director, agent or employee of an Owner to disclose any Confidential Information to the SEC or CBOE.

Proposed New Rule 3.32

CBOE proposes to adopt a new Rule 3.32—Ownership Concentration and Affiliation Limitation, as requested by the SEC staff.[19] Paragraph (a) of Rule 3.32 sets forth the ''Concentration Limitation'' applicable to CBSX LLC, and specifically states that for as long as CBSX LLC operates as a facility of the Exchange, no member of the Exchange, either alone or together with its Affiliates, at any time, may own, directly or indirectly, of record or beneficially, an aggregate amount of Shares that would result in a greater than twenty percent (20%) Percentage Interest in CBSX LLC.[20] In the event a member inadvertently violates the ''Concentration Limitation,'' Paragraph (c) of Rule 3.32 provides that the member shall have 180 days to cure the inadvertent violation. In the event the violation is not cured during such time, the member shall have all trading rights and privileges suspended on CBSX, and shall also be subject to any appropriate disciplinary action, including action for the failure of such member to enter into the CBSX LLC Operating Agreement.

Paragraph (b) of Rule 3.32 provides that without prior SEC approval, the Exchange or any entity with which it is affiliated shall not directly acquire or maintain an ownership interest in an Exchange member. In addition, without prior SEC approval, no Exchange member shall be or become affiliated with (i) the Exchange or (ii) any affiliate of the Exchange. Paragraph (b) of Rule 3.32 also states that nothing therein shall prohibit a member from acquiring or holding an equity interest in CBSX

[18] ''Regulatory Services Provider'' means CBOE for the term of the regulatory services to be provided under the Services Agreement. *See* Section 2.1(22) of the Operating Agreement.

[19] CBOE notes that Rule 3.32 is similar to ISE Rule 312, and Article 9 Section 12 of the Boston Stock Exchange Constitution.

[20] For purposes of this paragraph (a), and unless the context otherwise requires, the terms ''Affiliate,'' ''Share,'' and ''Percentage Interest'' shall have the same meaning specified in the CBSX LLC Operating Agreement.

LLC that is permitted by the ''Concentration Limitation'' or from being affiliated with OneChicago, LLC, provided that the Exchange's proportionate share of OneChicago, LLC's gross revenues does not exceed 5% of the Exchange's gross revenues.[21]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act[22] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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

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 CBOE 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–CBOE–2006–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–110. 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. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–110 and should be submitted on or before February 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1595 Filed 1–31–07; 8:45 am]

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[21] *See* Amendment No. 1. OneChicago, LLC is a joint venture of Interactive Brokers Group, LLC, CBOE, the Chicago Mercantile Exchange, and the Chicago Board of Trade. It is an electronic security futures exchange that trades futures on individual stocks, narrow-based indexes and ETFs.

[22] 15 U.S.C. 78f(b)(5).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55164; File No. SR FICC–2006–20]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the EPN Rules of its Mortgage-Backed Securities Division to Implement New Messaging Capabilities and Establish a Fee Structure

January 24, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 28, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by FICC. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) and (iii) of the Act[2] and Rules 19b–4(f)(2) and 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify the Electronic Pool Notification (''EPN'') rules of FICC's Mortgage-Backed Securities Division (''MBSD'') to implement new messaging capabilities for participants using the EPN service and to establish a fee structure for the new messaging capabilities.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii) and (iii).

[3] 17 CFR 240.19b–4(f)(2) and 240.19b–4(f)(4).

[4] The text of the proposed rule change is available at the FICC, at *http://www.ficc.com/commondocs/rule.filings/rule.filing.06–20.pdf*, and at the Commission's Public Reference Room.

and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to modify the EPN Rules of the MBSD to implement new messaging capabilities for participants using the EPN service and to establish a fee structure for the new messaging capabilities. Currently, MBSD participants who wish to effect a pool substitution through the EPN service must submit two separate messages to the MBSD to effect the substitution—one to cancel the originally allocated pool and one to submit the substituted pool. In the alternative, participants may manually cancel the originally allocated pool and specify the substituted pool to a contra-party through phone or fax messages. Either process is cumbersome and inefficient for members.

To remedy this, the MBSD has created a new EPN message type called the ''Cancel/Correct Pool Substitution'' (''Cancel/Correct'') to support the simultaneous cancellation of previously allocated pools and notification of substituted pools. By introducing the Cancel/Correct message, FICC will provide MBSD participants with an efficient method of transmitting pool substitutions to their allocation counterparties.[6]

FICC will amend the EPN fee schedule to incorporate related charges for the new Cancel/Correct message types. The proposed billing structure takes into account the Securities Industry and Financial Markets Association's cut-off times for delivering substitution and replacement pool information.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will enable FICC to improve messaging capabilities in the EPN system, leading to an increase in efficiencies for FICC and its members. This will enable FICC to better ensure the accurate reporting, clearance, and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and Rule 19b–4(f)(4)[8] thereunder because the proposed rule change effects a change in an existing service of FICC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of FICC and (ii) does not significantly affect the respective rights or obligations of FICC or those members using the service. The foregoing rule change has also become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2)[10] thereunder because the proposed rule establishes or changes a due, fee, or other charge applicable only to participants. At any time within sixty days of the filing of such 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–FICC–2006–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2006–20. 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 Section, 100 F Street, NE., Washington, DC 20549. The text of the proposed rule change is available at FICC, the Commission's Public Reference Room, and *http://www.ficc.com/commondocs/rule.filings/rule.filing.06–20.pdf.* 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–FICC–2006–20 and should be submitted on or before February 22, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1616 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

[5] The Commission has modified the text of the summaries prepared by FICC.

[6] Existing EPN messages and processes will continue to be supported without change.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55175; File No. SR–ISE–2007–07]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Pilot Program for Position and Exercise Limits for Options on the iShares® Russell 2000® Index Fund

January 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by ISE. On January 22, 2007, ISE submitted Amendment No. 1 to the proposed rule change. ISE has filed the proposal pursuant to Section 19(b)(3)(A) 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, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 412 to exempt options on the iShares® Russell 2000® Index Fund (''IWM'') from the position and exercise limits provided for under the Rule 412 Pilot Program and to increase the standard position and exercise limits for IWM as part of a six-month pilot (''Rule 412 IWM Pilot Program''). The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.iseoptions.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, ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .01 to Rule 412 on a six-month pilot basis to exempt options on IWM from the Rule 412 Pilot Program. Under the Rule 412 Pilot Program, the position and exercise limits for IWM would be reduced on January 22, 2007 from 500,000 to 250,000 contracts. The Exchange now proposes to allow position and exercise limits for options on IWM to remain at 500,000 contracts on a pilot basis, from January 22, 2007 through July 22, 2007.

In June 2005, as a result of a 2-for-1 stock split, the position limit for IWM options was temporarily increased from 250,000 contracts (covering 25,000,000 shares) to 500,000 contracts (covering 50,000,000 shares). At the time of the split, the furthest IWM option expiration date was January 2007. Therefore, the temporary increase of the IWM position limit will revert to the pre-split level (as provided for in connection with the Rule 412 Pilot Program) of 250,000 contracts after expiration in January 2007, or on January 22, 2007.

The Exchange believes that a position limit of 250,000 contracts is too low and may be a deterrent to the successful trading of IWM options. Importantly, options on IWM are 1/10th the size of options on the Russell 2000® Index (''RUT''), which has a position limit of 50,000 contracts.[5] Traders who trade IWM options to hedge positions in RUT options are likely to find a position limit of 250,000 contracts in IWM options too restrictive and insufficient to properly hedge. For example, if a trader held 50,000 RUT options and wanted to hedge that position with IWM options, the trader would, at a minimum, need 500,000 IWM options to properly hedge the position. Therefore, the Exchange believes that a position limit of 250,000 contracts is too low and may adversely affect market participants' ability to provide liquidity in this product.

Additionally, IWM options have grown to become one of the largest options contracts in terms of trading volume. For example, the volume in options on IWM set a new single-day record on June 8, 2006, when 760,803 contracts (120,229 calls and 640,574 puts) traded on that day. This record level volume beat the previous single-day high of 727,521 contracts on May 17, 2006. Further, over the previous six months, the average daily ISE trading volume of IWM options has been 87,121 contracts and a total of 11,064,353 contracts have traded on the Exchange.

As a result, the Exchange proposes that options on IWM be subject to position and exercise limits of 500,000 contracts on a pilot basis to run from January 22, 2007 through July 22, 2007.[6] The Exchange believes that increasing position and exercise limits for IWM options will lead to a more liquid and more competitive market environment for IWM options that will benefit customers interested in this product.

The Exchange would require that each member or member organization that maintains a position on the same side of the market in excess of 10,000 contracts in the IWM option class, for its own account or for the account of a customer report certain information.[7] This data would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge, and if applicable, the collateral used to carry the position. Exchange market-makers would continue to be exempt from this reporting requirement as market-maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain a position in excess of 200 contracts will remain at this level for IWM options.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[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).

[5] *See* ISE Rule 2004(a).

[6] Pursuant to ISE Rule 414, the exercise limit established under Rule 414 for IWM options shall be equivalent to the position limit prescribed for IWM options in Supplementary Material .01 to Rule 412. The increased exercise limits would only be in effect during the pilot period, to run from January 22, 2007 through July 22, 2007. *See* Amendment No. 1 to the proposed rule change.

[7] *See* ISE Rule 415(b).

[8] *See* ISE Rule 415(a).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit position and exercise limits for options on IWM to remain at 500,000 option contracts for a six-month pilot period. For this reason, the Commission designates the proposed rule change to be effective and operative upon filing with the Commission.[14]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2007–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–07. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–07 and should be submitted on or before February 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1581 Filed 1–31–07; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). 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 has decided to waive the five-day pre-filing notice requirement.

[13] *Id.*

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55161; File No. SR–ISE–2006–62]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval to Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto, To Implement a Penny Pilot Program To Quote Certain Options in Pennies

January 24, 2007.

I. Introduction

On October 11, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit certain option classes to be quoted in pennies on a pilot basis and to adopt certain quote mitigation strategies. The proposed rule change was published for comment in the **Federal Register** on October 20, 2006.[3] The Commission received three comment letters on the proposed rule change.[4] On November 6, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Exchange filed Amendment No. 2 to the proposal on January 5, 2007.[6] The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54603 (October 16, 2006), 71 FR 62024.

[4] *See* letters to Nancy M. Morris, Secretary, Commission, from Christopher Nagy, Chair, Securities Industry and Financial Markets Association (''SIFMA'') Options Committee, dated December 20, 2006 (''SIFMA Letter''); from Patrick Sexton, Associate General Counsel, CBOE, dated November 13, 2006 (''CBOE Letter''); and from Peter J. Bottini, Executive Vice President, optionsXpress, Inc., dated October 31, 2006 (''optionsXpress Letter'').

[5] Amendment No. 1 made a clarifying change to proposed rule text in ISE Rule 804(h). Amendment No. 1 is technical in nature, and the Commission is not publishing Amendment No. 1 for public comment.

[6] Amendment No. 2 revised the Regulatory Information Circular ISE will distribute to its

responded to the comment letters on January 11, 2007.[7] This order approves the proposed rule change as modified by Amendment Nos. 1 and 2.

II. Description of the Proposal

A. Scope of the Penny Pilot Program

ISE proposes to amend its rules to permit certain options classes to be quoted in pennies during a six-month pilot (''Penny Pilot Program''), which would commence on January 26, 2007. Specifically, the Exchange proposes to amend ISE Rule 710 to specify that the Exchange will: (1) Participate in the Penny Pilot Program, and (2) state that the parameters of the Penny Pilot Program will be communicated to its members via Regulatory Information Circular.

Currently, all six options exchanges, including ISE, quote options in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than $3 per contract is $0.05 and the minimum price variation for quotations in options series that are quoted at $3 per contract or greater is $0.10. Under the Penny Pilot Program, beginning on January 26, 2007, market participants would be able to begin quoting in penny increments in certain series of option classes.

The Penny Pilot Program would include the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (SUNW); and Agilent Technologies, Inc. (A). The Exchange will communicate the list of options to be included in the Penny Pilot Program to its membership via Regulatory Information Circular.

The minimum price variation increment for all classes included in the Penny Pilot Program, except for the QQQQs, would be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs would be quoted in $0.01 increments for all options series.

ISE commits to deliver a report to the Commission during the fourth month of the pilot, which would be composed of data from the first three months of trading. The report would analyze the impact of penny pricing on market quality and options system capacity.

In addition, the Exchange will amend ISE Rule 716, which currently permits trades in the Exchange's Block, Facilitation and Solicitation Mechanisms to be effected at ''split prices,'' which are the mid-points of the current standard trading increments, to clarify that options trading in penny increments will not be eligible for split pricing.

B. Quote Mitigation Strategies

To mitigate quote message traffic, ISE has represented to the Commission that it intends to codify certain quote mitigation strategies, which are currently in place on the Exchange.[8]

○ *Monitoring.* The ISE submits that it actively monitors the quotation activity of its market makers. When the Exchange detects that a market maker is disseminating significantly more quotes than an average market maker, the Exchange contacts that market maker and alerts it to such activity. Such monitoring frequently reveals that the market maker may have internal system issues or has incorrectly-set system parameters that were not immediately apparent. The Exchange believes that, even without uncovering problems, alerting a market maker to possible excessive quoting usually leads the market maker to take steps to reduce the number of its quotes.

○ *Holdback Timer.* The ISE has the systemic ability to limit the dissemination of quotations and other changes to the ISE best bid and offer according to prescribed time criteria (a ''Holdback Timer''). For example, if there is a change in the price of a security underlying an option, multiple market makers likely will adjust the price or size of their quotes. Rather than disseminating each individual change, the Holdback Timer permits the Exchange to wait until all market makers have adjusted their quotes and then to disseminate a new quotation. This helps prevent the ''flickering'' of quotations. The ISE proposes to codify the Holdback Timer. As proposed in ISE Rule 804, the ISE will utilize a Holdback Timer that delays quotation updates for up to, but not longer than, one second.

○ *Delisting.* The ISE has committed to the Commission that it will delist options with average daily volume (''ADV'') of less than 20 contracts.[9] However, it has been the ISE's policy to be more aggressive in delisting relatively inactive options, thereby eliminating the quotation traffic attendant to such listings. Currently, it is the ISE's policy to delist options with ADV of less than 50, even with the advent of the Exchange's new ''Second Market,''[10] which provides liquidity for less-active options.

III. Discussion

After careful review of the proposal, the comment letters and the Exchange's response thereto, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the implementation of a limited six-month Penny Pilot Program by the ISE and the five other options exchanges will provide valuable information to the exchanges, the Commission and others about the impact of penny quoting in the options market. In particular, the Penny Pilot Program will allow analysis of the impact of penny quoting on: (1) Spreads; (2) transaction costs; (3) payment for order flow; and (4) quote message traffic.

members to reflect the replacement of Glamis Gold, which was delisted, with Agilent Tech, Inc. in the list of options classes permitted to be quoted in pennies. Amendment No. 2 is technical in nature, and the Commission is not publishing Amendment No. 2 for public comment.

[7] *See* letter to Nancy M. Morris, Secretary, Commission, from Michael J. Simon, Secretary, ISE, submitted January 11, 2007. On January 23, 2007, ISE supplemented its initial response by providing additional information about its Holdback Timer. *See* letter to Nancy Morris, Secretary, Commission, from Michael J. Simon, Secretary, ISE, dated January 23, 2007 (collectively ''Exchange Response'').

[8] In addition to the quote mitigation strategies discussed herein, the ISE also proposed a fee program that requires market makers to purchase more APIs as the market maker generates more quotes, thus imposing economic incentives on market makers to limit the number of quotations they disseminate. *See* Securities Exchange Act Release No. 53522 (March 20, 2006), 71 FR 14975 (March 24, 2006) (SR–ISE–2006–09).

[9] *See* Securities Exchange Act Release No. 47483 (March 11, 2003), 68 FR 13352 (March 19, 2003) (SR–ISE–2003–04).

[10] *See* Securities Exchange Act Release No. 54340 (August 21, 2006), 71 FR 51240 (August 29, 2006) (SR–ISE–2006–40).

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

The Commission believes that the thirteen options classes to be included in the penny pilot program represent a diverse group of options classes with varied trading characteristics. This diversity should facilitate analyses by the Commission, the options exchanges and others. The Commission also believes that the Penny Pilot Program is sufficiently limited that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information.[13] Nevertheless, because the Commission expects that the Penny Pilot Program will increase quote message traffic, the Commission is also approving the Exchange's proposals to reduce the number of quotations it disseminates.

In this regard, the commenters expressed concern about ISE's proposed quote mitigation strategy. In particular, although optionsXpress generally supported ISE's Holdback Timer, it expressed concern that a longer holdback timer period could negatively impact market quality and undermine transparency in the options market.[14]

In addition, SIFMA recommends that all six of the option exchanges adopt a comprehensive and uniform quote mitigation strategy.[15] In particular, SIFMA strongly supports the adoption of the Holdback Timer mitigation proposal as the most efficient means of reducing quotation traffic. SIFMA, however, expressed concern that the lack of uniformity among the quote mitigation proposals adopted by the exchanges will impose a burden on member firms and cause confusion for market participants, especially retail investors.

Although SIFMA urges the adoption of a uniform and comprehensive approach to quote mitigation, it does not oppose ISE's quote mitigation proposals. In fact, SIFMA acknowledges that certain of ISE's proposals, such as notifying members whose quote activity suggests systems malfunctions or wrong settings and delisting inactive series can contribute to quote mitigation. SIFMA, however, expressed its belief that these proposals do not go far enough to resolve the industry's concerns regarding systems capacity.

The Commission supports efforts to implement a uniform, industry-wide quote mitigation plan. It does not, however, believe such efforts preclude individual exchanges from initiating their own quote mitigation strategies. The Commission does not believe that ISE's proposed quote mitigation strategies will lead to confusion among market participants.

Finally, CBOE commented that it did not have a fundamental objection to ISE's use of the Holdback Timer, but instead sought additional information concerning how the Holdback Timer functions and how orders sent to ISE by CBOE members or by CBOE though linkage might be impacted by the Holdback Timer.[16] Specifically, CBOE requested additional information about the extent to which the Holdback Timer is utilized throughout the day and whether it is used uniformly in all option classes traded on ISE. In response, ISE indicated that it intends to use the Holdback Timer uniformly in all option classes.[17] In addition, the ISE committed to apply the Holdback Timer mechanism throughout the trading day for a period of up to, but no more than, one second.[18] In further response to inquiry from CBOE, the ISE represented that it does not intend to disclose the precise length of the timer to its members, to non-members or to the other exchanges.[19]

In addition, CBOE inquired whether the Holdback Timer will apply only to market maker quotations and asked the Exchange to clarify what information will be delayed by the Holdback Timer. ISE clarified that the Holdback Timer will be applied when there is a change in the price and/or size of the security underlying an option. The Exchange will wait (for a period up to one second) until multiple market participants have adjusted their quotes and then will disseminate a new quotation. The Exchange will apply the Holdback Timer to all data that it sends to OPRA.[20] Finally, in response to CBOE's inquiry regarding the treatment of incoming marketable orders, ISE indicated that Holdback Timer ''does not affect the receipt or processing of quotes, orders or trades within the Exchange's system in any way.''[21] Therefore, incoming marketable orders sent to the Exchange will be executed against the prices and sizes available in ISE's system without regard to the application of the Holdback Timer.[22]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–ISE–2006–62), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on a six-month pilot basis, which will commence on January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1590 Filed 1–31–07; 8:45 am]

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[13] In addition, the Commission believes that it is appropriate for ISE to amend ISE Rule 716 to clarify that options trading in penny increments is not eligible for split pricing.

[14] *See* optionsXpress Letter, *supra* note 4. OptionsXpress also stated its view that current problems with the intermarket linkage will be exacerbated in the option classes participating in the Penny Pilot Program. *Id.*

[15] *See* SIFMA Letter, *supra* note 4.

[16] *See* CBOE Letter, *supra* note 4.

[17] Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE, and Jennifer L. Colihan, Special Counsel and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on January 23, 2007. *See also* Exchange Response, *supra* note 6.

[18] Telephone conversation between Katherine Simmons, Deputy General Counsel, ISE and Jennifer L. Colihan, Special Counsel, and Cyndi N. Rodriguez, Division of Market Regulation, Commission, on January 23, 2007.

[19] *Id.*

[20] *See* Exchange Response, *supra* note 7.

[21] *Id.*

[22] *Id.*

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55170; File Nos. SR–NASD–2006–131; SR–NYSE–2006–111; SR–Amex–2007–05]

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; New York Stock Exchange LLC; American Stock Exchange LLC; Notice of Filing of Proposed Rule Changes To Increase the Frequency of the Short Interest Reporting Requirements

January 26, 2007.

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, 2006, December 7, 2006, and January 10, 2007, the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange LLC (''NYSE''), and the American Stock Exchange LLC (''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II and III below, which Items have been prepared substantially by NASD, NYSE, or Amex. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

A. NASD

NASD is proposing to increase the frequency of the short interest reporting requirements under Rule 3360 from monthly to twice per month. No changes to the text of NASD rules are required by this proposed rule change.

B. NYSE

NYSE is proposing an amendment to NYSE Rule 421.10 (Short Positions), which would increase the frequency of the short interest reporting requirements under Rule 421.10 from monthly to twice per month. In addition, NYSE is proposing additional amendments to the Rule 421.10's text in light of recent changes to NYSE organizational structure.

The text of the proposed rule change is available at *http://www.NYSE.com*, at the NYSE, and at the Commission's Public Reference Room.

C. Amex

Amex proposes to increase the frequency of the short interest reporting requirements from monthly to twice a month, and to codify the short interest reporting requirement authorized by Amex Rule 30.

The text of the proposed rule change is available at *http://www.Amex.com*, at Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In filings with the Commission, NASD, NYSE, and Amex included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NASD, NYSE, and Amex have prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A. NASD

NASD is proposing to require members to record and report short interest position information to NASD twice per month. Currently, Rule 3360, Short-Interest Reporting, requires members to maintain a record of total short positions [3] in all customer and proprietary firm accounts in OTC Equity Securities [4] and securities listed on a national securities exchange if not reported to another self-regulatory organization (''SRO'') and to regularly report such information in the manner prescribed by NASD.[5]

Specifically, Rule 3360 requires that members report short positions as of the close of the settlement date designated by NASD and that the data be received by NASD no later than the second business day following the reporting settlement date designated by NASD. Currently, the designated settlement date is the 15th of each month, unless the 15th falls on a weekend or other non-settlement date, in which case the designated settlement date is the preceding settlement day.[6] The aggregate short interest data is, in turn, made publicly available. Investors and other interested parties may obtain the aggregate short interest data from NASDAQ's Web site, the OTCBB Web site, other commercial Web sites and certain newspapers.

NASD is proposing to require that members maintain and report to NASD short interest positions twice per month, such that the designated settlement dates would be the 15th (unless the 15th falls on a weekend or other non-settlement date, in which case the designated settlement date will be the preceding settlement day) and the last business day of each month. NASD will then make the short interest information publicly available twice per month. NASD believes that increasing the frequency of short interest reporting will provide additional and more timely information to public investors and other interested parties related to short selling.

In recognition of the technological and systems changes the proposed rule change may require, the effective date will be six (6) months following Commission approval of the proposed rule change.

B. NYSE

Proposal to Increase Frequency of Short Interest Reporting Requirement

NYSE Rule 421 requires that member organizations submit to NYSE periodic reports with respect to short positions in securities, covering such time period as may be designated by NYSE. NYSE makes available to the marketplace the total short interest in each individual stock and warrant traded on NYSE. NYSE releases this data each month to media outlets such as Dow Jones, The Wall Street Journal, The New York Times, The New York Daily News and Bloomberg Services. This information provides some indication of market sentiment with respect to securities listed on NYSE. To better inform the investing public, NYSE is proposing to increase the frequency of short interest reporting pursuant to Rule 421.10 from monthly to twice per month.

Specifically, NYSE is proposing that member organizations be required to maintain and report to NYSE short interest positions twice per month, such that the designated settlement dates would be the 15th [7] (unless the 15th falls on a weekend or other non-settlement date, in which case the designated settlement date will be the preceding settlement day) and the last business day of each month. Increased frequency of short interest reporting would provide additional and more timely information to public investors and other interested parties related to short selling. Upon Commission approval, NYSE membership would be notified of the new reporting requirement via Information Memo. NYSE proposes that this proposed rule change become effective 180 days after Commission approval of the filing in order to allow firms sufficient time to make any systems changes necessary to comply with the new requirement.

Amendments to Update NYSE Rule 421

NYSE is also proposing amendments that would update Rule 421.10 to reflect

[3] Short positions required to be reported under Rule 3360 are those resulting from ''short sales'' as the term is defined in Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of subsections (e)(1), (6), (7), (8), and (10) of Rule 10a–1 under the Exchange Act. *See* NASD Rule 3360(b)(1).

As part of the Commission's approval of amendments to expand Rule 3360 to OTC equity securities, the Commission urged NASD to review these exceptions to short interest reporting to determine whether further rulemaking is appropriate. NASD is currently conducting such a review. If, based on this review, NASD concludes that further rulemaking is warranted, NASD will file a separate rule change with the Commission. *See* Exchange Act Release No. 53224 (February 3, 2006), 71 FR 7101 (February 10, 2006).

[4] The term ''OTC Equity Securities'' refers to any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

[5] Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. *See Notice to Members* 03–08 (January 2003).

[6] A schedule of NASD's designated settlement dates can be found on NASD's Web site at *http://www.nasd.com.*

[7] *See* ISG Regulatory Memorandum 95–01 (March 6, 1995), announcing, among other things, the adoption by the SROs of policies and procedures that require short interest position reporting for all securities traded in the United States as well as the frequency of reporting short interest positions to SROs.

the adoption of the Commission's Regulation SHO.[8] Further, amendments are proposed to Rule 421.40 to update the rule by deleting subsections (2) and (3) which reference ''convertible bond margin accounts'' and ''subscription accounts,'' [9] because these types of accounts no longer exist. Rules 421.40(4) and (5) are accordingly repositioned as 421.40(2) and (3).

Further, NYSE is proposing amendments to Rule 421 that would delete all references to the terms ''member'' and ''allied member'' as categories of Exchange association. The term ''member'' no longer has the same regulatory meaning in the context of the NYSE/ARCA [10] business model, which now authorizes ''licensees'' to trade on behalf of member organizations. Likewise, the term ''allied member'' has an incongruous connotation in the context of NYSE's current business model.

C. Amex

Amex is proposing to formalize the requirement that member organizations record short interest position information and report it to Amex twice a month. Currently, the Amex requires members to maintain a record of total short positions in all customer and proprietary firm accounts in equity securities (stocks, ETFs and other equity products) and to regularly report such information in the manner authorized by Amex Rule 30 and described in the Amex Minor Rule Violation Fine Systems (Amex Rule 590, Part 3), Amex Information Circulars [11] and an Intermarket Surveillance Group (''ISG'') Regulatory Memorandum.[12] The proposed amendment would incorporate the short interest reporting requirements into new Amex Rule 30A as well as increase the frequency of public reporting from once to twice a month for all equity securities.

Amex makes available to the marketplace the total short interest in each equity and equity-type security traded on Amex. Amex releases this data each month to major media outlets, such as Dow Jones, and posts it to Amex's Web site. This information provides some indication of market sentiment with respect to securities listed on Amex. Other exchanges and the NASD release comparable short interest information.

As set forth in Amex Information Circular #95–136 and ISG Regulatory Memorandum 95–01, members must report short positions as of the close of the settlement dates designated by Amex and the data must be received by Amex no later than the second business day following the reporting settlement dates designated by Amex. Currently, the designated settlement date is the 15th of each month, unless the 15th falls on a weekend or other non-settlement date, in which case the designated settlement date is the preceding settlement day, and, for ETFs only, a second designated settlement date is the last business day of the month.

The aggregate short interest data is, in turn, made publicly available to major news sources, twice a month with respect to ETFs, and once a month with respect to stocks, warrants and other equity products.

Amex is proposing to increase the frequency with which it makes short interest reporting information publicly available for stocks, warrants and other equity securities (in addition to ETFs) from once a month (settlement date of the 15th) to twice a month. As proposed, the increased frequency of public short interest reporting will provide additional and timelier information to public investors and other interested parties related to short selling.

Implementation of the proposed new Rule 30A will formalize the authority Amex currently obtains from a broad rule (Amex Rule 30) concerning periodic reports and the informational notices referenced above.

The effective date will be 180 days following Commission approval of the proposed rule change.

2. Statutory Basis

NASD, NYSE, and Amex believe that the proposed rule changes are consistent with the provisions of Sections 6(b)(5) [13] and 15A(b)(6) [14] of the Act, which require, among other things, that NASD, NYSE, and Amex rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD, NYSE, and Amex believe that the proposed rule changes will provide additional and more timely information related to short selling.

B. Self-Regulatory Organizations' Statement on Burden on Competition

NASD, NYSE, and Amex do 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 Organizations' Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

A. NASD

The proposed rule change was published for comment in NASD *Notice to Members* 05–63 (September 2005). Two comments were received in response to the *Notice*.[15] A copy of the *Notice to Members* is attached as Exhibit 2a and copies of the comment letters received in response to the *Notice* are attached as Exhibit 2c to NASD's filing which is available at *http://www.NASD.com*, at NASD, and at the Commission's Public Reference Room.

Of the two comment letters received, both were in favor of the proposed rule change. One commenter noted that minimal programming and costs would be required to implement this proposal, but recommended six months for implementation of the proposal.[16] The other commenter indicated that increases or decreases in short interest positions are significant indicators of investor sentiment.[17] As such, the commenter stated that timelier reporting of short interest data provides additional relevant information and more accurate indications of changes in investor outlook.[18]

As noted above, in recognition of technological and systems changes that may be required to implement the proposed rule change, NASD has proposed an extended implementation period, which NASD believes will provide members adequate time to make any necessary changes.

B. NYSE

NYSE has neither solicited nor received written comments on the proposed rule change.

C. Amex

Amex has neither solicited nor received written comments on the proposed rule change.

[8] 17 CFR 242.200 through 242.203.

[9] In 1984, the Federal Reserve Board amended Regulation T to eliminate convertible bond margin accounts and subscription accounts.

[10] *See* Release No. 34–53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (order approving SR–NYSE–2005–77).

[11] *See* Amex Information Circulars #95–136 and #98–0234.

[12] *See* ISG Regulatory Memorandum 95–01.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78o–3(b)(6).

[15] Comments were received from the following: Lisa Morel-Misener of Cognos Incorporated, dated October 27, 2005 and Christopher Charles of Wulff Hansen & Co., dated November 15, 2005.

[16] *See supra* note 14, Wulff Hansen & Co. letter.

[17] *See supra* note 14, Cognos Incorporated letter.

[18] *Id.*

III. Date of Effectiveness of the Proposed Rule Changes 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 such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission notes that NASD, NYSE and Amex, are proposing an implementation period for the proposed rule changes. Specifically, the Commission notes that NASD, NYSE, and Amex are proposing that the proposed rule changes become effective 180 days (six months) after the Commission approval in order to allow firms sufficient time to make any systems changes necessary to comply with the new requirements. The Commission specifically requests comment regarding whether this implementation period could be shorter.

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 Numbers SR–NASD–2006–131, SR–NYSE–2006–111, or SR–Amex–2007–05 as appropriate on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NASD–2006–131, SR–NYSE–2006–111, or SR–AMEX–2007–05, as appropriate.

These file numbers 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. Copies of such filing also will be available for inspection and copying at the principal offices of NASD, NYSE or Amex, as appropriate.

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 Numbers SR–NASD–2006–131, SR–NYSE–2006–111, or SR–Amex–2007–05, as appropriate, and should be submitted on or before February 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1584 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55156; File No. SR–NYSEArca–2006–73]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval to Proposed Rule Change as Modified by Amendment No. 1 Thereto, To Create an Options Penny Pilot Program

January 23, 2007.

I. Introduction

On October 10, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NYSE Arca Rules to permit certain option classes to be quoted in pennies on a pilot basis and to adopt a quote mitigation strategy. The proposed rule change was published for comment in the **Federal Register** on October 18, 2006.[3] The Commission received three comment letters on the proposed rule change.[4] On December 1, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[5] The Exchange responded to the comment letters on January 9, 2007.[6] This order approves the proposed rule change as modified by Amendment No. 1.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

A. Scope of the Penny Pilot Program

NYSE Arca proposes to amend its rules to permit certain options classes to be quoted in pennies during a six-month pilot (''Penny Pilot Program''), which would commence on January 26, 2007. Specifically, the Exchange proposes to (1) clarify the language in NYSE Arca Rule 6.72, which sets forth the minimum increments for options quoted on the Exchange; (2) add a reference in Rule 6.72 to the Penny Pilot Program; and (3) provide for an approved quote mitigation exception to NYSE Arca Rule 6.86.

Currently, all six options exchanges, including NYSE Arca, quote options in nickel and dime increments. The minimum price variation for quotations in options series that are quoted at less than $3 per contract is $0.05 and the minimum price variation for quotations in options series that are quoted at $3 per contract or greater is $0.10. Under the Penny Pilot Program, beginning on January 26, 2007, market participants would be able to begin quoting in penny increments in certain series of option classes.

The Penny Pilot Program would include the following thirteen options: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE);

[3] *See* Securities Exchange Act Release No. 54590 (October 12, 2006), 71 FR 61525.

[4] *See* letters to Nancy M. Morris, Secretary, Commission, from Wayne Jervis, Managing Member of the General Partner, Jervis Alternative Asset Management Co. (''JAAMCO''), dated January 7, 2007 (''JAAMCO Letter''); from Christopher Nagy, Chair, Securities Industry and Financial Markets Association (''SIFMA'') Options Committee, dated December 20, 2006 (''SIFMA Letter''); and from Peter J. Bottini, Executive Vice-President, optionsXpress, Inc. (''optionsXpress''), dated October 31, 2006 (''optionsXpress Letter'').

[5] Among other things, Amendment No. 1 proposed to replace Glamis Gold, which was delisted, with Agilent Tech, Inc. in the list of options classes permitted to be quoted in pennies. Amendment No. 1 is technical in nature, and the Commission is not publishing Amendment No. 1 for public comment.

[6] *See* letter to Nancy M. Morris, Secretary, Commission, from Mary Yeager, Corporate Secretary, NYSE Arca, dated January 9, 2007 (''Exchange Response'').

Advanced Micro Devices, Inc. (AMD), (Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (SUNW); and Agilent Technologies, Inc. (A).

The minimum price variation for all classes included in the Penny Pilot Program, except for the QQQQs, would be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs would be quoted in $0.01 increments for all options series.[7]

NYSE Arca commits to deliver a report to the Commission during the fourth month of the pilot, which would be composed of data from the first three months of trading. The report would analyze the impact of penny pricing on market quality and options system capacity.

B. Quote Mitigation Proposal

NYSE Arca Rule 6.86 describes the obligations of the Exchange to collect, process and make available to quotation vendors the best bid and best offer for each option series that is a reported security. The Exchange proposes an exception to making quotes available to quotation vendors as part of an approved quote mitigation plan. The quote mitigation strategy proposed by the Exchange is intended to reduce the number of quotations generated by NYSE Arca for all option issues traded at NYSE Arca, not just issues included in the Penny Pilot Program. NYSE Arca plans to reduce the number of quote messages it sends to the Options Price Reporting Authority (''OPRA'') by only submitting quote messages for ''active'' options series. Active options series will be defined as: (i) The series has traded on any options exchange in the previous 14 calendar days; (ii) the series is solely listed on NYSE Arca; (iii) the series has been trading ten days or less; or (iv) the Exchange has an order in the series. For any option series that falls into one of the aforementioned categories, NYSE Arca will submit quotes to OPRA as it currently does. For any options series that falls outside of the above categories, NYSE Arca will still accept quotes from OTP Holders in these series; however, such quotes will not be disseminated to OPRA.

In addition, under the proposal, there are certain instances when a series would become active intraday. This would occur if: (i) The series trades at any options exchange; (ii) NYSE Arca receives an order in the series; or (iii) NYSE Arca receives a request for quote from a customer in that series. When one of the above circumstances exists, NYSE Arca would immediately begin disseminating quotes to OPRA in that particular series and would continue doing so until that series fell outside of the active series definition. If the series does not trade, and there are no orders in the series the next day, the series would no longer be considered active.

Finally, because NYSE Arca will continue to collect quotes from OTP Holders in inactive series, upon receiving an order in an inactive series, the Exchange will either execute that order against any marketable quotes in the trading system, or will link that order to the away market displaying the NBBO in that series. Accordingly, OTP Holders' orders will not be disadvantaged and will still have an opportunity to execute at the best price in such inactive series. By limiting quote dissemination to solely active series as described above, the Exchange anticipates that it will reduce quote message traffic by 20–30%.

III. Discussion

After careful review of the proposal, the comment letters, and the Exchange's response thereto, the Commission finds that the proposed rule change, as modified by Amendment No. 1, 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 proposal is consistent with Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the implementation of a limited six-month Penny Pilot Program by NYSE Arca and the five other options exchanges will provide valuable information to the exchanges, the Commission and others about the impact of penny quoting in the options market. In particular, the Penny Pilot Program will allow analysis of the impact of penny quoting on: (1) Spreads; (2) transaction costs; (3) payment for order flow; and (4) quote message traffic.

The Commission believes that the thirteen options classes to be included in the penny pilot program represent a diverse group of options classes with varied trading characteristics. This diversity should facilitate analyses by the Commission, the options exchanges and others. The Commission also believes that the Penny Pilot Program is sufficiently limited that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information.[10] Nevertheless, because the Commission expects that the Penny Pilot Program will increase quote message traffic, the Commission is also approving the Exchange's proposal to reduce the number of quotations it disseminates.

In this regard, two of the commenters expressed concern about NYSE Arca's proposed quote mitigation strategy.[11] In particular, optionsXpress was concerned that removing quotes from the market will reduce transparency and thereby undermine investor opportunity. SIFMA also objected to NYSE Arca's quote mitigation proposal because it believes that ''going dark'' in certain less active series will reduce investment opportunities for investors and may impede growth in the options industry.

In addition, SIFMA recommended that all six of the option exchanges adopt a comprehensive and uniform quote mitigation strategy. In particular, SIFMA strongly supports the adoption of the ''holdback timer'' mitigation proposal as the most efficient means of reducing quotation traffic. SIFMA expressed concern that the lack of uniformity among the quote mitigation proposals adopted by the exchanges will impose a burden on member firms and cause confusion for market participants, especially retail investors.

[7] In Amendment No. 1, NYSE Arca requested that an additional option class be designated to quote and trade all series in pennies. In its comment letter, JAAMCO also expressed strong support for penny increments in all listed options. *See* JAAMCO Letter, *supra* note 4.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission does not agree with the Exchange's recommendation to allow an additional options class to be quoted in pennies in all series at this time. The Commission believes that it is important to commence penny quoting in a measured manner so as not to exacerbate systems capacity constraints.

[11] JAAMCO did not comment directly on NYSE Arca's proposal, but rather stated its strong support for penny increment options trading that ''(1) includes all listed options, (2) prohibits Internalization of order flow to the extent that it disadvantages the customer, (3) has pricing linked to all listed options exchanges, (4) does not exclude options above $3.00 in value, and (5) does not exclude illiquid/not-daily-traded options.'' JAAMCO Letter, *supra* note 4.

Although the Commission supports efforts to implement a uniform, industry-wide quote mitigation plan, it does not believe such efforts preclude individual exchanges from initiating their own quote mitigation strategies. The Exchange stated its belief that, ''by not burdening the marketplace with excessive quotes, in series that have proven to have little or no investor interest, the Exchange will have the ability to supply additional quoting activity where most needed, thereby creating liquidity and a more competitive marketplace, which in turn should provide increased opportunities for all investors.'' [12] In addition, the Exchange clarified that it will continue to collect and process quotes from Exchange Market Makers and will publish a quote upon a trade at another market or upon receipt of an order in that series.

The Commission believes that NYSE Arca's proposed quote mitigation strategy is consistent with the Act and that it is unlikely to lead to confusion among market participants. In this regard, the Commission notes that Exchanges do not currently quote the identical series and classes of options. Furthermore, the Exchange has committed to provide a thorough study of the impact that its quote mitigation plan has on, among other things, system capacity problems or other problems that arose related to the operation of the Penny Pilot Program. Consequently, the Commission believes there are sufficient safeguards in place to analyze and, if necessary, address any negative impact that may result from NYSE Arca's proposal to disseminate quotes only in ''active options series'' as defined by Commentary .03 to NYSE Arca Rule 6.86.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSEArca–2006–73), as modified by Amendment No. 1, be, and hereby is, approved on a six-month pilot basis, which will commence on January 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1589 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

[12] *See* Exchange Response, *supra* note 6.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55178; File No. SR–NYSEArca–2007–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Arca Marketplace Trading Sessions

January 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update the list in NYSE Arca Equities Rule 7.34 of securities eligible to trade in one or more, but not all three, of the Exchange's trading sessions. The securities to be added to the list are : (1) Claymore MACROshares Oil Up Tradeable Shares and (2) Claymore MACROshares Oil Down Tradeable Shares. These securities are traded on NYSE Arca, L.L.C. (''NYSE Arca Marketplace''), the equities trading facility of NYSE Arca Equities, pursuant to unlisted trading privileges (''UTP'') and are described in NYSE Arca Equities Rule 8.400 (''Paired Trust Shares''). The Exchange also proposes to include a reference to NYSE Arca Equities Rule 8.400 in NYSE Arca Equities Rules 7.34(a)(3)(A) and 7.34(a)(4)(A).

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nysearca.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

[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).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 7.34 currently provides, in part, that the NYSE Arca Marketplace shall have three trading sessions each day: an Opening Session (1 a.m. Pacific Time (''PT'') to 6:30 a.m. PT), a Core Trading Session (6:30 a.m. PT to 1 p.m. PT), and a Late Trading Session (1 p.m. PT to 5 p.m. PT), and that the Core Trading Session for securities described in NYSE Arca Equities Rules 5.1(b)(13), 5.1(b)(18), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, and 8.300 (each, a ''Derivative Securities Product'') shall conclude at 1:15 pm (PT).[5] The Exchange proposes to amend NYSE Arca Equities Rule 7.34(a)(3)(A) to add Paired Trust Shares described in NYSE Arca Equities Rule 8.400 to the securities for which the Core Trading Session concludes at 1:15 p.m. PT.[6]

The Exchange also includes in NYSE Arca Equities Rule 7.34 a list of those securities which are eligible to trade in one or more, but not all three, of the Exchange's trading sessions, and maintains on its Web site a list that

[5] NYSE Arca Equities Rules 5.1(b)(13), 5.2(j)(3), 8.100, 8.200, 8.201, 8.202, 8.203, and 8.300 relate to Unit Investment Trusts, Investment Company Units and Portfolio Depositary Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, and Partnership Units, respectively. *See* Securities Exchange Act Release No. 54997 (December 21, 2006), 71 FR 78501 (December 29, 2006) (SR–NYSEArca–2006–77) (relating to amendments to NYSE Arca Equities Rule 7.34).

[6] In Securities Exchange Act Release No. 55033 (December 29, 2006), 72 FR 1253 (January 10, 2007) (SR–NYSEArca–2006–75), the Commission approved NYSE Arca Equities Rule 8.400 to permit trading on the NYSE Arca Marketplace, either by listing or pursuant to UTP, of securities issued by a pair of related trusts and based on an index or other numerical variable whose value reflects the value of assets, prices, or other economic interests. The Commission also approved in this filing the trading, pursuant to UTP, of the Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares.

identifies all securities traded on the NYSE Arca Marketplace that do not trade for the duration of each of the three sessions specified in NYSE Arca Equities Rule 7.34. The Exchange proposes to add the following securities to these lists: (1) Claymore MACROshares Oil Up Tradeable Shares and (2) Claymore MACROshares Oil Down Tradeable Shares.[7] These securities are traded on the Exchange pursuant to UTP and are Paired Trust Shares, as described in NYSE Arca Equities Rule 8.400.

Finally, the Exchange proposes to amend NYSE Arca Equities Rule 7.34(a)(4)(A) relating to trading halt procedures applicable to trading specified Derivative Securities Products on a UTP basis in the Opening, Core, and Late Trading Sessions. The Exchange proposes to add Paired Trust Shares described in NYSE Arca Equities Rule 8.400 to the list of Derivative Securities Products to which NYSE Arca Equities Rule 7.34(a)(4)(A) applies.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[8] in general, and furthers the objectives of section 6(b)(5)[9] 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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[10] and rule 19b–4(f)(6) thereunder.[11]

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because the proposed rule change should provide transparency and more clarity with respect to the trading hours eligibility of certain derivative securities products and should promote consistency in the trading halts of derivative securities. For these reasons, the Commission designates the proposed rule change as operative immediately.[12]

At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–02 and should be submitted by February 22, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1593 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* note 5, *supra.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires an exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing notice requirement in this case.

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55151; File No. SR–OCC–2006–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Definition of Fund Share

January 23, 2007.

I. Introduction

On September 21, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2006–16 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice

[1] 15 U.S.C. 78s(b)(1).

of the proposal was published in the **Federal Register** on November 28, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

OCC issues and clears options on ''fund shares'' that are defined in Article I of OCC's By-Laws as a publicly traded interest in a trust, investment company, or other entity holding portfolios or baskets of securities.[3] The rule change amends the definition of ''fund share'' in order to accommodate requests from OCC participant exchanges that OCC clear and settle options on exchange traded fund (''ETF'') shares that represent interests in an entity holding euros and investing the euros in time deposits.[4] Specifically, the rule change amends the definition to include interests in entities holding portfolios or baskets of currencies, including single currencies. The definition would also be revised to make it clear that (i) it includes entities with actively managed portfolios and (ii) it applies only to entities principally engaged in holding portfolios or baskets of securities or currencies and not to entities that do so as an incident to some other business.

If approved by the Commission, the proposed rule change would not be implemented until definitive copies of an appropriate supplement to the options disclosure document, *Characteristics and Risks of Standardized Options*, are available for distribution.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The purpose of the proposed rule change is to amend OCC's By-Laws and Rules so that OCC may clear and settle options on ETF shares that represent interest in an entity that holds currencies, including single currencies. Accordingly, the proposed rule change should promote the prompt and accurate clearance and settlement of such securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2006–16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1585 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

[2] Securities Exchange Act Release No. 54786, (November 20, 2006), 71 FR 68872.

[3] Securities Exchange Act Release No. 46914 (November 26, 2002), 67 FR 72261 (December 4, 2002) [File No. SR–OCC–2002–22].

[4] Securities and Exchange Act Release Nos. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) [File No. SR–ISE–2005–60] and 54983 (December 20, 2006), 71 FR 78476 (December 29, 2006) [File No. SR–AMEX–2006–87] (Orders approving a proposed rule change to allow listing and trading of fund shares that hold specified non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55152; File No. SR–OCC–2006–17]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Definition of Fund Share and Options on Commodity Pool ETFs

January 23, 2007.

I. Introduction

On September 21, 2006, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2006–17 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on November 28, 2006.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The rule change permits OCC to issue, clear, and settle options on equity interests issued by exchange-traded funds (''ETFs'') that trade directly or indirectly in commodity futures products and are therefore subject to regulation by the Commodity Futures Trading Commission (''CFTC'') as commodity pools. The American Stock Exchange recently filed a proposed rule change to list and trade options on (1) interests (''Interests'') issued by the DB Commodity Index Tracking Fund (''DBC Fund''), whose value is intended to track the performance of the ''Deutsche Bank Liquid Commodity Index™—Excess Return'' and (2) units issued by the United States Oil Fund, L.P. (''Oil Fund''), whose value is intended to track the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma, less Oil Fund expenses.[3]

The interests and the units are freely transferable and may be bought and sold like any other ETF interest or other exchange-listed security. In addition to options on the Interests and the Units, there may be other similar options on ETFs regulated by the CFTC as commodity pools that OCC may be asked to issue, clear, and settle in the future.

The definition of ''fund share'' in Article I of OCC's By-Laws is currently limited to shares in entities ''holding portfolios or baskets of securities.'' However, the Oil Fund invests directly in commodity futures contracts. Additionally, although as a technical matter the DBC Fund invests exclusively in securities, entities such as the DBC Fund that invest in the securities issued by a commodity pool are themselves deemed to be commodity pools because they represent an indirect investment in commodity futures contracts. OCC is therefore amending the definition of ''fund share'' in Article I of its By-Laws to specifically refer to interests in an entity that is a commodity pool. The definition is revised to make it clear that it includes feeder funds.

The proposed rule change will not be implemented until definitive copies of an appropriate supplement to the options disclosure document, *Characteristics and Risks of Standardized Options*, are available for distribution.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54784, (November 20, 2006), 71 FR 68871.

[3] File No. SR–AMEX–2006–110. *See* Securities Exchange Act Release Nos. 54450 (September 14, 2006) 71 FR 55230 (September 21, 2006) [File No. SR–AMEX–2006–44] and 53582 (March 31, 2006) 71 FR 17510 (April 6, 2006) [File No. SR–AMEX–2005–127] for more detailed descriptions of the DBC Fund and of the Oil Fund.

transactions.[4] The purpose of the proposed rule change is to amend OCC's By-Laws so that OCC may clear and settle options on equity interests issued by ETFs that trade directly or indirectly in commodity futures products. Accordingly, the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2006–17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–1588 Filed 1–31–07; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections and revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collection listed below is pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

SSA Guidance for Use of the Tax Information Authorization Form—0960-NEW. The Internal Revenue Service (IRS) Form 8821 is used by taxpayers to authorize the release of tax information to a third party. The IRS agrees that a properly completed IRS Form 8821 is an appropriate means of designating the Department of Health and Human Services (HHS) to receive the tax information of a Medicare Part B beneficiary who has appealed a determination of Income-Related Monthly Adjustment Amount (IRMAA). Specifically, Medicare Part B beneficiaries who wish to appeal SSA's reconsideration of their IRMAA amounts will be sent a copy of the HA–501 (Request for Hearing by an Administrative Law Judge) and with it the IRS Form 8821, which will enable beneficiaries to authorize disclosure of their relevant beneficiary tax data to HHS for use in conducting the appeals hearing. The respondents are Medicare Part B beneficiaries who want to request an appeal of their IRMAA amount.

Type of Request: Request for full approval for a collection cleared under OMB emergency clearance procedures.

Number of Respondents: 6,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 1,500 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collection would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Representative Payee Report—20 CFR 404.265 and 416.665—0960–0691. Form SSA–6234 is used to collect information from organizational representative payees, such as institutions, to determine if (1) payments sent to these representative payees have been used for Social Security beneficiaries' current maintenance and personal needs; (2) the representative payees continue to be capable representatives concerned with beneficiaries' welfare; and (3) the representative payee organization is charging the beneficiary a fee, and if so, the amount of the fee. The respondents are organizational representative payees.

Type of Request: Revision of an OMB-approved collection.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 187,500.

Dated: January 26, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–1625 Filed 1–31–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Des Moines International Airport, Des Moines, IA

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

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the Des Moines International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before March 5, 2007.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, Missouri 64106–2325. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Craig Smith, Aviation Director, at the following address: City of Des Moines, Des Moines International Airport, 5800 Fleur Drive, Des Moines, Iowa 50321–2854.

FOR FURTHER INFORMATION CONTACT: Nicoletta Oliver, Airports Compliance

Specialist, FAA, Central Region, 901 Locust, Kansas City, MO 64106–2325, (816) 329–2642. The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Des Moines International Airport under the provisions of AIR 21.

On January 19, 2007, the FAA determined that the request to release property at the Des Moines International Airport submitted by the City of Des Moines, met the procedural requirements of the Federal Aviation Administration. The FAA will approve or disapprove the request, in whole or in part, no later than April 30, 2007.

The following is a brief overview of the request.

The City of Des Moines requests the release of approximately 5.07 acres of airport property. The land is not being used for future aeronautical purposes. The release of the property will allow for the sale of the land to generate revenue for the airport. The proceeds would be used for future FAA Airport Improvement Program (AIP) eligible projects at the Des Moines International Airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the request in person at the City of Des Moines, Des Moines, Iowa.

Issued in Kansas City, Missouri, on January 19, 2007.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 07–437 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held February 22, 2007, from 9 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. The planned agenda is expected to include:

• FAA

—ATO Metrics Dashboard.

—FY08 Budget.

—ADS-B Backup Analysis.

—ADS-B JRC Results (If available).

—OEP.

• R&P WG Report.

—OEP.

• RTCA OEP Centered Symposium.

Note: *Non-Government attendees to the meeting must go through security and be escorted to and from the conference room. Attendees with laptops will be required to register them at the security desk upon arrival and departure.* Agenda items will be posted on *http://www.rtca.org* Web site.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 23, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–436 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Third Meeting, Special Committeee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

SUMMARY: The FAA is issuing this notice to advise the public of a first meeting of RTCA Special Committee 211, Nickel-Cadmium, Lead Acid and Rechargeable Lithium Batteries.

DATES: The meeting will be held February 21–22, 2007, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org* for directions.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 211 meeting. The agenda will include:

• February 21–22:

• Opening Plenary Session (Welcome, Introductions, and Administrative Remarks, Agenda Overview).

• Report PMC approval of Change 1 to DO–293.

• Report Decision to maintain Lithium MOPS separated from DO–293 (Minimum Operational Performance Standards).

• Continue with the development of Lithium MOPS (Minimum Operational Performance Standards).

• Closing Plenary Session (Other Business, Establish Agenda, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 24, 2007.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 07–434 Filed 1–31–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Advisory Circulars, Other Policy Documents and Proposed Technical Standard Orders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: This is a recurring Notice of Availability, and request for comments, on draft advisory circulars (ACs), other policy documents, and proposed technical standard orders (TSOs) currently offered by Aviation Safety.

SUMMARY: The FAA's Aviation Safety, an organization responsible for the certification, production approval, and continued airworthiness of aircraft, and certification of pilots, mechanics, and others in safety related positions, publishes proposed non-regulatory documents that are available for public comment on the Internet at *http://www.faa.gov/aircraft/draft_docs/*.

DATES: We must receive comments on or before the due date for each document as specified on the Web site.

ADDRESSES: Send comments on proposed documents to the Federal Aviation Administration at the address specified on the Web site for the document being commented on, to the attention of the individual and office identified as point of contact for the document.

FOR FURTHER INFORMATION CONTACT: See the individual or FAA office identified on the Web site for the specified document.

SUPPLEMENTARY INFORMATION: Final advisory circulars, other policy documents, and technical standard orders (TSOs) are available on FAA's Web site, including final documents published by the Aircraft Certification Service on FAA's Regulatory and Guidance Library (RGL) at *http://rgl.faa.gov/*.

Comments Invited

When commenting on draft ACs, other policy documents or proposed TSOs, you should identify the document by its number. The Aviation Safety organization, will consider all comments received on or before the closing date before issuing a final document. You can obtain a paper copy of the draft document or proposed TSO by contacting the individual or FAA office responsible for the document as identified on the Web site. You will find the draft ACs, other policy documents and proposed TSOs on the ''Aviation Safety Draft Documents Open for Comment'' Web site at *http://www.faa.gov/aircraft/draft_docs/*. For Internet retrieval assistance, contact the AIR Internet Content Program Manager at 202–267–8361.

Background

We do not publish an individual **Federal Register** Notice for each document we make available for public comment. On the Web site, you may subscribe to our service for e-mail notification when new draft documents are made available. Persons wishing to comment on our draft ACs, other policy documents and proposed TSOs can find them by using the FAA's Internet address listed above. This notice of availability and request for comments on documents produced by Aviation Safety will appear again in 30 days.

Issued in Washington, DC on January 26, 2007.

Terry Allen,

Acting Manager, Production and Airworthiness Division, Aircraft Certification Service.

[FR Doc. 07–435 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–25765]

Union Pacific Railroad Company; Notice of Withdrawal of Petition for Waiver of Compliance and Cancellation of Public Hearing

On November 28, 2006, FRA published a document in the **Federal Register** announcing that it had received a petition from the Union Pacific Railroad Company (UP) seeking a waiver of compliance from certain provisions of Brake System Safety Standards for Freight and Other Non-passenger Trains and Equipment, End of Train Devices, Title 49 Code of Federal Regulations (CFR) Part 232; Freight Car Safety Standards, 49 CFR Part 215; and Locomotive Safety Standards, 49 CFR Part 229. 71 FR 68885. The requested relief would have permitted run-through trains that originate in Mexico and are interchanged with the UP at the Laredo, Texas Gateway, to operate into the interior of the United States without having to perform additional train or locomotive inspections at the U.S./Mexican border. In response to the November 28, 2006 notice, an interested party requested a public hearing on the issue and FRA subsequently scheduled a public hearing for February 7, 2007. 72 FR 185 (January 3, 2007).

By a letter dated January 25, 2007, the UP has withdrawn its petition for waiver.

Accordingly, the public hearing scheduled for February 7, 2007, in Laredo, Texas is hereby canceled.

Issued in Washington, DC on January 30, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–1738 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257]

Notice No. 41; Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of the Railroad Safety Advisory Committee (RSAC) meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The RSAC meeting topics include opening remarks from the FRA Administrator, presentations on National Transportation Safety Board recommendations, Transportation Security Administration rulemakings and advisories, hazardous materials rulemakings, hazardous materials safety/security routing, tank car issues, and the private crossing safety inquiry. Status reports will be given on the Medical Standards, Passenger Safety, Roadway Worker Safety, Continuous Welded Rail, and Locomotive Safety Standards working groups. The Committee may possibly be asked to vote on recommendations on railroad operating rules and to amend the Continuous Welded Rail task to permit consideration of additional issues related to amendment of the Track Safety Standards. This agenda is subject to change.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m., and conclude at 4 p.m., on Thursday, February 22, 2007.

ADDRESSES: The meeting of the RSAC will be held at the National Housing Center, 1177 15th Street, NW., Washington, DC 20005. The meeting is open to the public on a first-come, first-serve basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Patricia Butera, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590, (202) 493–

6212 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the RSAC. The meeting is scheduled to begin at 9:30 a.m., and conclude at 4 p.m., on Thursday, February 22, 2007. The meeting of the RSAC will be held at the National Housing Center, 1177 15th Street, NW., Washington, DC 20005.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The RSAC is composed of 54 voting representatives from 31 member organizations, representing various rail industry perspectives. In addition, there are non-voting advisory representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico, the National Transportation Safety Board, and the Federal Transit Administration. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities.

See the RSAC Web site for details on pending tasks at: *http://rsac.fra.dot.gov/*. Please refer to the notice published in the **Federal Register** on March 11, 1996, (61 FR 9740) for more information about the RSAC.

Issued in Washington, DC on January 26, 2007.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E7–1608 Filed 1–31–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 283X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Orange County, NY

On January 12, 2007, Norfolk Southern Railway Company (NSR) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 1.64-mile line of railroad, extending from milepost ZU 45.00 to milepost ZU 46.64 at Harriman, Orange County, NY. The line traverses United States Postal Service Zip Code 10926, and includes the former station at Harriman.

In addition to an exemption from 49 U.S.C. 10903, NSR seeks exemption from 49 U.S.C. 10904 [offer of financial assistance (OFA) procedures] and 49 U.S.C. 10905 [public use conditions]. In support, NSR states its intention to reclassify and retain the segment of the line between milepost ZU 45.00 and milepost ZU 45.90 as industrial or storage track upon consummation of the proposed abandonment. These requests will be addressed in the final decision.

The line does not contain federally granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 2, 2007.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption, unless the Board grants the requested exemption from the OFA process. Each OFA must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless the Board grants the requested exemption from the public use provisions, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 21, 2007. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–290 (Sub-No. 283X), and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) James R. Paschall, Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–2191. Replies to the petition are due on or before February 21, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: January 24, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–1516 Filed 1–31–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[RP–2007–x]

Proposed Collection; Comment Request for Revenue Procedure

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2007–x.

DATES: Written comments should be received on or before April 2, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW.,

Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure 2007–x.

OMB Number: 1545–XXXX.

Revenue Procedure Number: 2007–x.

Abstract: The respondents are nonprofit organizations seeking recognition of exemption under certain parts of § 501(c) of the Internal Revenue Code. These organizations must submit a letter of application. We need this information to determine whether the organization meets the legal requirements for tax-exempt status. In addition, the information will be used to help the Service delete certain information from the text of an adverse determination letter or ruling before it is made available for public inspection, as required under § 6110.

Current Actions: There are no changes being made to this revenue procedure.

Type of Review: New collection.

Affected Public: Not-For-Profit Institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 200.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 24, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1555 Filed 1–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–103330–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–103330–97 (TD 8839), IRS Adoption Taxpayer Identification Numbers (§ 301.6109–3).

DATES: Written comments should be received on or before April 2, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: IRS Adoption Taxpayer Identification Numbers.

OMB Number: 1545–1564.

Regulation Project Number: REG–103330–97.

Abstract: The regulations provide rules for obtaining IRS adoption taxpayer identification numbers (ATINs), which are used to identify children placed for adoption. To obtain an ATIN, a prospective adoptive parent must file Form W–7A. The regulations assist prospective adoptive parents in claiming tax benefits with respect to these children.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

The burden for the collection of information is reflected in the burden for Form W–7A.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 24, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1556 Filed 1–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 98–1 and REG–108639–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 98–1, Nondiscrimination Testing, and an existing notice of proposed rulemaking, REG–108639–99, Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m) (§§ 401(k) and 401(m)).

DATES: Written comments should be received on or before April 2, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice and regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at or through the Internet at *Allan.M.Hopklins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Nondiscrimination Testing (Notice 98–1) and Retirement Plans; Cash or Deferred Arrangements Under Section 401(k) and Matching Contributions or Employee Contributions Under Section 401(m) (REG–108639–99).

OMB Number: 1545–1579.

Notice Number: Number: Notice 98–1.

Regulation Project Number: REG–108639–99.

Abstract: Notice 98–1 and REG–108639–99 provides guidance for discrimination testing under section 401(k) and (m) of the Internal Revenue Code as amended by section 1433(c) and (d) of the Small Business job Protection Act of 1996. The guidance is directed to employers maintaining retirement plans subject to these Code sections.

Current Actions: There are no changes being made to the notice and regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 147,000.

Estimated Time Per Respondent: 20 min.

Estimated Total Annual Burden Hours: 49,000.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1557 Filed 1–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–15

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–15, Waivers of Minimum Funding Standards.

DATES: Written comments should be received on or before April 2, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins, at (202)622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Waivers of Minimum Funding Standards.

OMB Number: 1545–1873.

Revenue Procedure Number: Revenue Procedure 2004–15.

Abstract: Revenue Procedure 2004–15 describes the process for obtaining a waiver from the minimum funding standards set forth in section 412 of the Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations not-for-profit institutions, farms and State, local or tribal governments.

Estimated Number of Respondents: 55.

Estimated Annual Average Time Per Respondent: 86 hours.

Estimated Total Annual Hours: 4,730.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1558 Filed 1–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–59–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–59–89 (T.D. 8394), Proceeds of Bonds Used for Reimbursement (§ 1.150–2(e) (originally contained in § 1.104–18(c)).

DATES: Written comments should be received on or before April 2, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Proceeds of Bonds Used for Reimbursement.

OMB Number: 1545–1226. Regulation Project Number: FI–59–89.

Abstract: This regulation clarifies when the allocation of bond proceeds to reimburse expenditures previously made by an issuer of the bond is treated as an expenditure of the bond proceeds. The issuer must express a reasonable official intent, on or prior to the date of payment, to reimburse the expenditure in order to assure that the reimbursement is not a device to evade requirements imposed by the Internal Revenue Code with respect to tax exempt bonds.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments, and not-for-profit institutions.

Estimated Number of Respondents: 2,500.

Estimated Time Per Respondent: 2 hours, 24 minutes.

Estimated Total Annual Burden Hours: 6,000.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 24, 2007.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1559 Filed 1–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–25, Automatic Data Processing.

DATES: Written comments should be received on or before April 2, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Automatic Data Processing.

OMB Number: 1545–1595.

Revenue Procedure Number: Revenue Procedure 98–25.

Abstract: Revenue Procedure 98–25 provides taxpayers with comprehensive guidance on requirements for keeping and providing IRS access to electronic tax records. The revenue procedure requires taxpayers to retain electronic, or ''machine-sensible'' records, ''so long as their contents may become material to the administration of the internal revenue laws.'' Such materiality would continue, according to IRS, at least until the period of limitations, including extensions, expires for each tax year.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 120,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 25, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–1561 Filed 1–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted in New Orleans, Louisiana.

The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 22, 2007 at 1 p.m. to 5 p.m. ET, Friday, February 23, 2007 at 8 a.m. to 5 p.m. ET, and Saturday, February 24, 2007 at 8 a.m. to 12 Noon, ET.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Thursday, February 22, 2007 at 1 p.m. ET, Friday, February 23, 2007 at 8 a.m. ET, and Saturday, February 24, 2007 at 8 a.m. ET. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: January 24, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–1551 Filed 1–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 22, 2007.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, February 22, 2007 from 1 p.m. Pacific Time to 2:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: January 24, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–1552 Filed 1–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 21, 2007, at 2:30 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, February 21, 2007, at 2:30 p.m. ET via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: January 24, 2007.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E7–1553 Filed 1–31–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Means Test and Geographic Thresholds

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Each year VA establishes, by directive, new means test thresholds and geographic income limits.

DATES: These rates are effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Deputy Director, Business Policy, Chief Business Office (CBO) (163), Veterans Health Administration (VHA), 810 Vermont, NW., Washington, DC 20420 (202) 254–0329. This is not a toll-free number.)

Department of Veterans Affairs.	VHA DIRECTIVE 2006–064.
Veterans Health Administration Washington, DC 20420.	December 19, 2006.

Means Test and Geographic-Based Means Test Thresholds for Calendar Year 2007

1. Purpose

This Veterans Health Administration (VHA) Directive provides the Means Test Thresholds, Medicare Deductible Rate, and Child Income Exclusion for calendar year 2007. In addition, this Directive provides an internet link to the United States (U.S.) Housing and Urban Development's (HUD) income limits for Fiscal Year (FY) 2006 for use by VHA in calendar year 2007.

2. Background

a. Title 38 United States Code (U.S.C.) Section 1722(c) requires that on January 1 of each year, the Secretary of Veterans Affairs increase the means test threshold amounts by the same percentage the maximum rates of pension benefits were increased under 38 U.S.C. 5312(a) during the preceding calendar year. Under the provisions of 38 U.S.C. 5312, the Department of Veterans Affairs (VA) is required to increase the benefit rates and income limitations in the pension and parents' Dependency and Indemnity Compensation (DIC) Program by the same percentage and effective date as increases in the benefit amounts payable under Title II of the Social Security Act.

b. On November 13, 2006, the Veterans Benefits Administration (VBA) announced that effective December 1, 2006, veterans' benefits will receive an increase of 3.3 percent.

c. Public Law 107–135, the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, directed VA to implement a Geographic-based Means Test (GMT) (see 38 U.S.C. Section 1705(a)(7)). VA uses HUD's ''low-income'' geographic-based income limits as the thresholds for VA's GMT. **Note:** The Health Eligibility Center (HEC) controls the GMT for VA; as such, HEC will install Patch IVMB*2.0*905 before January 1, 2007. A veteran's income from the previous year is compared with the appropriate GMT threshold for the previous fiscal year to determine if the veteran should be placed in priority category 7. The ''low income'' geographic-based income thresholds for FY 2006 can be found at: *http://www.va.gov/healtheligibility/Library/pubs/GMTIncomeThresholds/*

d. Definitions.

(1) ''Below the means test threshold.'' ''Below the means test threshold'' is defined as those veterans whose attributable income and net worth are such that they are unable to defray the expenses of care; therefore, they are not subject to co-payment charges for hospital and outpatient medical services. Within the Veterans Health Information Systems and Technology Architecture (VistA) system such veterans are designated as ''Means Test Copay Exempt.''

This VHA Directive Expires December 31, 2007

(2) ''Above the means test and GMT threshold.'' ''Above the means test and GMT threshold'' is defined as those veterans whose attributable income and net worth are such that they are able to defray the expenses of care; therefore they must agree to pay a co-payment for hospital care and outpatient medical services. Within the VistA system these veterans are designated as ''Means Test Copay Required.''

(3) ''Above the means test and below the GMT threshold.'' ''Above the means test and below the GMT threshold,'' is defined as those veterans whose attributable income and net worth are such that they are able to defray the expense of care, but whose inpatient medical care co-payments are reduced 80 percent. These veterans must also agree to pay a co-payment for hospital care and outpatient medical services. Within the VistA system these veterans are identified as ''GMT Copay Required.''

Note: Veterans subject to means test and GMT co-payments may be responsible for applicable co-payments for outpatient medications and/or extended care services.

3. *Policy:* It is VHA policy that all VA health care facilities must install patches DG*5.3*734, EAS*1.0*78, and IB*2.0*362 before January 1, 2007.

Note: The Health Eligibility Center (HEC) controls the GMT for VA; as such, HEC will install Patch IVMB*2.0*905 before January 1, 2007. The new means test, net worth, and GMT threshold rates are effective January 1, 2007.

4. *Action.*

a. *Medical Facility Director.* Before January 1, 2007, each medical facility Director, or designee, is responsible of installing patches DG*5.3*734, EAS*1.0*78, and IB*2.0*362.

Note: The new means test and GMT threshold rates are effective January 1, 2007. Do *not* manually load or edit the new rates indicated within this Directive into the VistA System. All updates must be made using the released patches.

b. *Means Test Thresholds.* The following new Means Test Thresholds are effective January 1, 2007, through December 31, 2007:

(1) *Veterans with No Dependents:*
(a) Below Means Test Threshold: $27,790.
(b) Above Means Test Threshold: $27,791.
(2) *Veterans with One Dependent:*
(a) Below Means Test Threshold: $33,350.
(b) Above Means Test Threshold: $33,351.
(3) *Veterans with Two Dependents:*
(a) Below Means Test Threshold: $35,216.
(b) Above Means Test Threshold: $35,217.
(4) *Veterans with Three Dependents:*
(a) Below Means Test Threshold: $37,082.
(b) Above Means Test Threshold: $37,083.
(5) *Veterans with Four Dependents:*
(a) Below Means Test Threshold: $38,948.
(b) Above Means Test Threshold: $38,949.
(6) *Veterans with Five Dependents:*
(a) Below Means Test Threshold: $40,814.
(b) Above Means Test Threshold: $40,815.

c. *Dependent Threshold Amount Increase (above two dependents):* $1,866.

d. *Child Income Exclusion:* $8,750.

e. *Medicare Deductible:* $992.

f. *Income and/or Asset threshold for Net Worth Development:* $80,000.

g. *Maximum Annual Rate of Pension:* Base rate.

(1) The base rate for a single veteran with no dependents is $10,929.

Note: This rate is also used to determine if certain veterans are subject to co-payments for Extended Care Services.

(2) The base rate with one dependent is $14,313.

(3) Add $1,866 for each additional dependent.

h. The Medication Co-payment Threshold effective date is January 1 of each year.

5. References

a. Title 38 U.S.C. 1705(a)(7) and 1722.

b. Title 38 Codes of Federal Regulations (CFR) Sections 17.36(b)(7), 17.47(d), and 17.47(f).

6. *Follow-Up Responsibility:* The Chief Business Office (16) is responsible for the contents of this Directive. Questions may be addressed to 202–254–0406.

7. *Rescissions:* VHA Directive 2005–064 is rescinded. This VHA Directive expires December 31, 2007.

Michael J. Kussman,

Acting Under Secretary for Health.

Dated: January 26, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E7–1657 Filed 1–31–07; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Copayment for Medication

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is hereby giving notice that there is no change in the medication copayment rate for Calendar Year 2007 and the rate will remain at $8.00. The total amount of copayments in a calendar year for a veteran enrolled in one of the priority groups 2 through 6 shall not exceed the cap of $960.00. These rates are based on the Prescription Drug component of the Medical Consumer Price Index as cited in Title 38, Code of Federal Regulations, Part 17, Section 17.110.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business Policy (163), Veterans Health Administration, VA, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–0406. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: VA is required by law to charge certain veterans a copayment for each 30-day or less supply of medication provided on an outpatient basis (other than medication administered during treatment) for treatment of a non-service connected condition. Public Law 106–117, The Veterans' Millennium Health Care and Benefits Act, gives the Secretary of Veterans Affairs authority to increase the medication copayment amount and to establish a calendar year cap on the amount of medication copayments charged to veterans enrolled in priority groups 2 through 6. When veterans reach the calendar year cap, they will continue to receive medications without additional copayments for that calendar year.

Formula for Calculating the Medication Copayment Amount

Each calendar year beginning after December 31, 2002, the Prescription Drug component of the Medical Consumer Price Index of the previous September 30 is divided by the Index as of September 30, 2001. The ratio is then multiplied by the original copayment amount of $7.00. The copayment amount of the new calendar year is then rounded down to the whole dollar amount.

Computation of Calendar Year 2007 Medication Copayment Amount

a. Prescription Drug Medical Consumer Price Index as of September 30, 2006 = 368.4.

b. Prescription Drug Medical Consumer Price Index as of September 30, 2001 = 304.8.

c. Index = 368.4 divided by 304.8 = 1.2086.

d. (INDEX) X $7= $8.46.

e. Copayment amount = $8.00.

Dated: January 26, 2007.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E7–1658 Filed 1–31–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
February 1, 2007

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2008: Proposed Annual Payment Rate Updates, and Policy Changes; and Proposed Hospital Direct and Indirect Graduate Medical Education Policy Changes; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412 and 413

[CMS–1529–P]

RIN 0938–AO30

Medicare Program; Prospective Payment System for Long-Term Care Hospitals RY 2008: Proposed Annual Payment Rate Updates, and Policy Changes; and Proposed Hospital Direct and Indirect Graduate Medical Education Policy Changes

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the annual payment rates for the Medicare prospective payment system (PPS) for inpatient hospital services provided by long-term care hospitals (LTCHs). The proposed payment amounts and factors used to determine the updated Federal rates that are described in this proposed rule were determined based on the LTCH PPS rate year July 1, 2007 through June 30, 2008. The annual update of the long-term care diagnosis-related group (LTC–DRG) classifications and relative weights remains linked to the annual adjustments of the acute care hospital inpatient diagnosis-related group system, and would continue to be effective each October 1. The proposed outlier threshold for July 1, 2007, through June 30, 2008, would also be derived from the LTCH PPS rate year calculations. We are also proposing to make policy changes which include proposed revisions to the GME and IME policies. In addition, we are adding a technical amendment correcting the regulations text at § 412.22.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 2, 2007.

ADDRESSES: In commenting, please refer to file code CMS–1529–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (no duplicates, please):

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

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

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

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

Judy Richter, (410) 786–2590 (General information, payment adjustments for special cases, and onsite discharges and readmissions, interrupted stays, co-located providers, and short-stay outliers).

Michele Hudson, (410) 786–5490 (Calculation of the payment rates, LTC–DRGs, relative weights and case-mix index, market basket, wage index, budget neutrality, and other payment adjustments).

Ann Fagan, (410) 786–5662 (Patient classification system).

Miechal Lefkowitz, (410) 786–5316 (Graduate Medical Education payments).

Linda McKenna, (410) 786–4537 (Payment adjustments, interrupted stay, and transition period).

Renate Rockwell, (410) 786–4645 (Graduate Medical Education payments).

Elizabeth Truong, (410) 786–6005 (Federal rate update, budget neutrality, other adjustments, and calculation of the payment rates).

Michael Treitel, (410) 786–4552 (High cost outliers and cost-to-charge ratios).

SUPPLEMENTARY INFORMATION:

Submission of Public Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code [CMS–1529–P] and the specific ''issue identifier'' that precedes the section on which you choose to comment.

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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.

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Acronyms

Because of the many terms to which we refer by acronym in this proposed rule, we are listing the acronyms used and their corresponding terms in alphabetical order below:

AAMC Association of American Medical Colleges
AFMAA Academic Family Medicine Advocacy Alliance
AHA American Hospital Association
AHIMA American Health Information Management Association
ALOS Average length of stay
ALTHA Acute Long Term Hospital Association
AMGA American Medical Group Association
AMPRA American Medical Peer Review Association
AOA American Osteopathic Association
APR All patient refined
ASCA Administrative Simplification Compliance Act of 2002 (Pub. L. 107–105)
BBA Balanced Budget Act of 1997 (Pub. L. 105–33)
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113)
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554)
BN Budget neutrality
CBSA Core-based statistical area
CCR Cost-to-charge ratio
C&M Coordination and maintenance
CMI Case-mix index
CMS Centers for Medicare & Medicaid Services
COLA Cost of living adjustment
CS Consolidated severity-adjusted
CY Calendar year
DSH Disproportionate share of low-income patients
DRGs Diagnosis-related groups
FI Fiscal intermediary
FMC Family Medicine Center
FTE Full-time equivalent
FY Federal fiscal year
GME Graduate medical education
HCO High-cost outlier
HCRIS Hospital cost report information system
HHA Home health agency
HHS (Department of) Health and Human Services
HIPAA Health Insurance Portability and Accountability Act (Pub. L. 104–191)
HIPC Health Information Policy Council
HwHs Hospitals within hospitals
ICD–9–CM International Classification of Diseases, Ninth Revision, Clinical Modification (codes)
IME Indirect medical education
I–O Input-Output
IPF Inpatient psychiatric facility
IPPS [Acute Care Hospital] Inpatient Prospective Payment System
IRF Inpatient rehabilitation facility
LOS Length of stay
LTC–DRG Long-term care diagnosis-related group
LTCH Long-term care hospital
MCE Medicare code editor
MDC Major diagnostic categories
MedPAC Medicare Payment Advisory Commission
MedPAR Medicare provider analysis and review
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173)
MSA Metropolitan statistical area
NAICS North American Industrial Classification System
NALTH National Association of Long Term Hospitals
NCHS National Center for Health Statistics
OACT [CMS'] Office of the Actuary
OBRA 86 Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509)
OMB Office of Management and Budget
OPM U.S. Office of Personnel Management
O.R. Operating room
OSCAR Online Survey Certification and Reporting (System)
OTN One-Time Notification
PIP Periodic interim payment

PLI Professional liability insurance
PMSA Primary metropolitan statistical area
PPI Producer Price Indexes
PPS Prospective payment system
PRA Per resident amount
PSF Provider specific file
QIO Quality Improvement Organization (formerly Peer Review organization (PRO))
RIA Regulatory impact analysis
RPL Rehabilitation psychiatric long-term care (hospital)
RTI Research Triangle Institute, International
RY Rate year (begins July 1 and ends June 30)
SIC Standard industrial code
SNF Skilled nursing facility
SSO Short-stay outlier
TEFRA Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248)
TEP Technical expert panel
UHDDS Uniform hospital discharge data set

I. Background

[If you choose to comment on issues in this section, please include the caption ''BACKGROUND'' at the beginning of your comments.]

A. Legislative and Regulatory Authority

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

Section 1886(d)(1)(B)(iv)(I) of the Act defines a LTCH as ''a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days.'' Section 1886(d)(1)(B)(iv)(II) of the Act also provides an alternative definition of LTCHs: specifically, a hospital that first received payment under section 1886(d) of the Act in 1986 and has an average inpatient length of stay (LOS) (as determined by the Secretary of Health and Human Services (the Secretary)) of greater than 20 days and has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis that reflects a finding of neoplastic disease in the 12-month cost reporting period ending in fiscal year (FY) 1997.

Section 123 of the BBRA requires the PPS for LTCHs to be a ''per discharge'' system with a diagnosis-related group (DRG) based patient classification system that reflects the differences in patient resources and costs in LTCHs. It also requires that the ''per discharge'' system maintain budget neutrality (BN). We believe the statutory mandate for BN applies only to the first year of the implementation of the LTCH PPS such that estimated payments in the first year of the PPS were projected to equal payments that would have been paid for operating and capital-related costs of LTCHs had this new payment system not been enacted.

Section 307(b)(1) of the BIPA, among other things, mandates that the Secretary shall examine, and may provide for, adjustments to payments under the LTCH PPS, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment.

In the August 30, 2002 **Federal Register**, we issued a final rule that implemented the LTCH PPS authorized under BBRA and BIPA (67 FR 55954). This system uses information from LTCH patient records to classify patients into distinct long-term care diagnosis-related groups (LTC–DRGs) based on clinical characteristics and expected resource needs. Payments are calculated for each LTC–DRG and provisions are made for appropriate payment adjustments. Payment rates under the LTCH PPS are updated annually and published in the **Federal Register**.

The LTCH PPS replaced the reasonable cost-based payment system under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) for payments for inpatient services provided by a LTCH with a cost reporting period beginning on or after October 1, 2002. (The regulations implementing the TEFRA reasonable cost-based payment provisions are located at 42 CFR part 413.) With the implementation of the PPS for acute care hospitals authorized by the Social Security Amendments of 1983 (Pub. L. 98–21), which added section 1886(d) to the Act, certain hospitals, including LTCHs, were excluded from the PPS for acute care hospitals and were paid their reasonable costs for inpatient services subject to a per discharge limitation or target amount under the TEFRA system. For each cost reporting period, a hospital-specific ceiling on payments was determined by multiplying the hospital's updated target amount by the number of total current year Medicare discharges. (Generally, in this document when we refer to discharges, the intent is to describe Medicare discharges.) The August 30, 2002 final rule further details the payment policy under the TEFRA system (67 FR 55954).

In the August 30, 2002 final rule, we also presented an in-depth discussion of the LTCH PPS, including the patient classification system, relative weights, payment rates, additional payments, and the BN requirements mandated by section 123 of the BBRA. The same final rule that established regulations for the LTCH PPS under 42 CFR part 412, subpart O, also contained LTCH provisions related to covered inpatient services, limitation on charges to beneficiaries, medical review requirements, furnishing of inpatient hospital services directly or under arrangement, and reporting and recordkeeping requirements. We refer readers to the August 30, 2002 final rule for a comprehensive discussion of the research and data that supported the establishment of the LTCH PPS (67 FR 55954).

In the June 6, 2003 **Federal Register**, we published a final rule that set forth the FY 2004 annual update of the payment rates for the Medicare PPS for inpatient hospital services furnished by LTCHs (68 FR 34122). It also changed the annual period for which the payment rates are effective. The annual updated rates are now effective from July 1 through June 30 instead of from October 1 through September 30. We refer to the July through June time period as a ''long-term care hospital rate year'' (LTCH PPS RY). In addition, we changed the publication schedule for the annual update to allow for an effective date of July 1. The payment amounts and factors used to determine the annual update of the LTCH PPS Federal rate is based on a LTCH PPS rate year. While the LTCH payment rate update is effective July 1, the annual update of the LTC–DRG classifications and relative weights are linked to the annual adjustments of the acute care hospital inpatient DRGs and are effective each October 1.

In the Prospective Payment System for Long-Term Care Hospitals RY 2007: Annual Payment Rate Updates, Policy Changes, and Clarifications final rule (71 FR 27798) (hereinafter referred to as the RY 2007 LTCH PPS final rule), we set forth the 2007 LTCH PPS rate year annual update of the payment rates for the Medicare PPS for inpatient hospital services provided by LTCHs. We also adopted the ''Rehabilitation, Psychiatric, Long-Term Care (RPL)'' market basket under the LTCH PPS in place of the excluded hospital with capital market basket. In addition, we implemented a zero percent update to

the LTCH PPS Federal rate for RY 2007. We also revised the existing payment adjustment for short stay outlier (SSO) cases by reducing part of the current payment formula and adding a fourth component to that payment formula. Also, we sunsetted the surgical DRG exception to the payment policy established under the 3-day or less interruption of stay policy. Finally, we clarified the policy at § 412.534(c) for adjusting the LTCH PPS payment so that the LTCH PPS payment is equivalent to what would otherwise be payable under § 412.1(a).

B. Criteria for Classification as a LTCH

1. Classification as a LTCH

Under the existing regulations at § 412.23(e)(1) and (e)(2)(i), which implement section 1886(d)(1)(B)(iv)(I) of the Act, to qualify to be paid under the LTCH PPS, a hospital must have a provider agreement with Medicare and must have an average Medicare inpatient LOS of greater than 25 days. Alternatively, § 412.23(e)(2)(ii) states that for cost reporting periods beginning on or after August 5, 1997, a hospital that was first excluded from the PPS in 1986 and can demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principal diagnosis that reflects a finding of neoplastic disease must have an average inpatient LOS for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days.

Section 412.23(e)(3) provides that, subject to the provisions of paragraphs (e)(3)(ii) through (e)(3)(iv) of this section, the average Medicare inpatient LOS, specified under § 412.23(e)(2)(i) is calculated by dividing the total number of covered and noncovered days of stay for Medicare inpatients (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period. Section 412.23 also provides that subject to the provisions of paragraphs (e)(3)(ii) through (e)(3)(iv) of this section, the average inpatient LOS specified under § 412.23(e)(2)(ii) is calculated by dividing the total number of days for all patients, including both Medicare and non-Medicare inpatients (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period.

In the RY 2005 LTCH PPS final rule (69 FR 25674), we specified the procedure for calculating a hospital's inpatient average length of stay (ALOS) for purposes of classification as a LTCH. That is, if a patient's stay includes days of care furnished during two or more separate consecutive cost reporting periods, the total days of a patient's stay would be reported in the cost reporting period during which the patient is discharged (69 FR 25705). Therefore, we revised § 412.23(e)(3)(ii) to specify that, effective for cost reporting periods beginning on or after July 1, 2004, in calculating a hospital's ALOS, if the days of an inpatient stay involve days of care furnished during two or more separate consecutive cost reporting periods, the total number of days of the stay are considered to have occurred in the cost reporting period during which the inpatient was discharged.

Fiscal intermediaries (FIs) verify that LTCHs meet the ALOS requirements. We note that the inpatient days of a patient who is admitted to a LTCH without any remaining Medicare days of coverage, regardless of the fact that the patient is a Medicare beneficiary, will not be included in the above calculation. Because Medicare would not be paying for any of the patient's treatment, data on the patient's stay would not be included in the Medicare claims processing systems. As described in § 409.61, in order for both covered and noncovered days of a LTCH hospitalization to be included, a patient admitted to the LTCH must have at least one remaining benefit day (68 FR 34123).

The FI's determination of whether or not a hospital qualifies as an LTCH is based on the hospital's discharge data from the hospital's most recent complete cost reporting period as specified in § 412.23(e)(3) and is effective at the start of the hospital's next cost reporting period as specified in § 412.22(d). However, if the hospital does not meet the ALOS requirement as specified in § 412.23(e)(2)(i) and (ii), the hospital may provide the FI with data indicating a change in the ALOS by the same method for the period of at least 5 months of the immediately preceding 6-month period (69 FR 25676). Our interpretation of § 412.23(e)(3) was to allow hospitals to submit data using a period of at least 5 months of the most recent data from the immediately preceding 6-month period.

As we stated in the FY 2004 Inpatient Prospective Payment System (IPPS) final rule, published in the August 1, 2003 **Federal Register**, prior to the implementation of the LTCH PPS, we did rely on data from the most recently submitted cost report for purposes of calculating the ALOS (68 FR 45464). The calculation to determine whether an acute care hospital qualifies for LTCH status was based on total days and discharges for LTCH inpatients. However, with the implementation of the LTCH PPS, for the ALOS specified under § 412.23(e)(2)(i), we revised § 412.23(e)(3)(i) to only count total days and discharges for Medicare inpatients (67 FR 55970 through 55974). In addition, the ALOS specified under § 412.23(e)(2)(ii) is calculated by dividing the total number of days for all patients, including both Medicare and non-Medicare inpatients (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period. As we discussed in the FY 2004 IPPS final rule, we are unable to capture the necessary data from our present cost reporting forms (68 FR 45464). Therefore, we have notified FIs and LTCHs that until the cost reporting forms are revised, for purposes of calculating the ALOS, we will be relying upon census data extracted from Medicare Provider Analysis and Review (MedPAR) files that reflect each LTCH's cost reporting period (68 FR 45464). Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iv).

2. Hospitals Excluded From the LTCH PPS

The following hospitals are paid under special payment provisions, as described in § 412.22(c) and, therefore, are not subject to the LTCH PPS rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90–248) (42 U.S.C. 1395b–1) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603) (42 U.S.C. 1395b–1 (note)) (Statewide all-payer systems, subject to the rate-of-increase test at section 1814(b) of the Act).
- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

C. Transition Period for Implementation of the LTCH PPS

In the August 30, 2002 final rule (67 FR 55954), we provided for a 5-year transition period. During this 5-year transition period, a LTCH's total payment under the PPS was based on an increasing percentage of the Federal rate with a corresponding decrease in the percentage of the LTCH PPS payment that is based on reasonable cost

concepts. However, effective for cost reporting periods beginning on or after October 1, 2006, total LTCH PPS payments are based on 100 percent of the Federal rate.

D. Limitation on Charges to Beneficiaries

In the August 30, 2002 final rule, we presented an in-depth discussion of beneficiary liability under the LTCH PPS (67 FR 55974 through 55975). In the RY 2005 LTCH PPS final rule (69 FR 25676), we clarified that the discussion of beneficiary liability in the August 30, 2002 final rule was not meant to establish rates or payments for, or define Medicare-eligible expenses. Under § 412.507, if the Medicare payment to the LTCH is the full LTC–DRG payment amount, as consistent with other established hospital prospective payment systems, a LTCH may not bill a Medicare beneficiary for more than the deductible and coinsurance amounts as specified under § 409.82, § 409.83, and § 409.87 and for items and services as specified under § 489.30(a). However, under the LTCH PPS, Medicare will only pay for days for which the beneficiary has coverage until the SSO threshold is exceeded. (See section V.A.1.a. of this preamble.) Therefore, if the Medicare payment was for a SSO case (§ 412.529) that was less than the full LTC–DRG payment amount because the beneficiary had insufficient remaining Medicare days, the LTCH could also charge the beneficiary for services delivered on those uncovered days (§ 412.507).

E. Administrative Simplification Compliance Act (ASCA) and Health Insurance Portability and Accountability Act (HIPAA) Compliance

Claims submitted to Medicare must comply with both the Administrative Simplification Compliance Act (ASCA) (Pub. L. 107–105), and Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104–191). Section 3 of the ASCA requires that the Medicare Program deny payment under Part A or Part B for any expenses incurred for items or services ''for which a claim is submitted other than in an electronic form specified by the Secretary.'' Section 1862(h) of the Act (as added by section 3(a) of the ASCA) provides that the Secretary shall waive such denial in two specific types of cases and may also waive such denial ''in such unusual cases as the Secretary finds appropriate'' (68 FR 48805). Section 3 of the ASCA operates in the context of the ASCA provisions of HIPAA, which include, among other provisions, the transactions and code sets standards requirements codified as 45 CFR parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered health care providers, to conduct the covered electronic transactions according to the applicable transactions and code sets standards.

II. Summary of the Major Contents of This Proposed Rule

In this proposed rule, we are setting forth the proposed annual update to the payment rates for the Medicare LTCH PPS, as well as, proposing other policy changes. The following is a summary of the major areas that we are addressing in this proposed rule.

In section III. of this preamble, we discuss the LTCH PPS patient classification and the relative weights which remain linked to the annual adjustments of the acute care hospital inpatient DRG system, and are based on the annual revisions to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) codes effective each October 1.

Also, in section III. of this preamble, we are proposing to establish a BN requirement for when the LTC–DRG classifications and relative weights are updated annually to reflect changes in relative LTCH resource use. This requirement would ensure that estimated aggregate LTCH PPS payments would not decrease or increase as a result of the annual update to the LTC–DRG classifications and relative weights.

As discussed in section IV.C. of this preamble, we are proposing a 0.71 percent update to the LTCH PPS Federal rate for the 2008 LTCH PPS rate year based on an adjustment to the most recent estimate of the LTCH PPS market basket to account for changes in coding practices. Also in section IV. of this preamble, we discuss the proposed prospective payment rate for RY 2008, and in section VI. we discuss the applicable adjustments to the proposed payment rates, including the proposed revisions to the wage index, proposed labor-related share, the proposed cost-of-living adjustment (COLA) factors, and the proposed outlier threshold, for the 2008 LTCH PPS rate year.

In section V.A.1.b. of this preamble, we discuss an approach being considered to make a change to our present payment methodology for certain SSO cases. Under this approach, payment for SSO cases would be subject to a further adjustment where the patient's LOS at the LTCH is less than or equal to an IPPS LOS threshold for the DRG.

In section V.B. of this preamble, we discuss the proposed expansion of the present 25 percent admission policy at existing § 412.534(c) to those certain situations not already affected by that existing policy. We are proposing to specify that for cost reporting periods beginning on or after July 1, 2007, that ''grandfathered'' LTCH HwHs and LTCH satellites, at § 412.22(f) and § 412.22(h)(3)(i) respectively, would also be included in the policy set forth at existing § 412.534. We are also proposing that if the percentage of LTCH's or LTCH satellite facility's discharges that were admitted from any non-co-located referring hospital exceeds 25 percent (or the applicable percentage) for a particular cost reporting period, an adjusted amount would be made for those Medicare discharges that were admitted from that referring hospital beyond the 25 percent (or the applicable percentage) threshold.

In section X. of this preamble, we will discuss our on-going monitoring protocols under the LTCH PPS.

In section XI. of this preamble, we will discuss the recommendations made by the Research Triangle Institute, International's (RTI) evaluation of the feasibility of adopting recommendations made in the June 2004 Medicare Payment Advisory Commission (MedPAC) Report. (Addendum B will include the executive summary of the RTI report.)

In section XII. of this preamble, we discuss our proposal to redefine the statutory term ''all or substantially all of the costs for the training program in the nonhospital setting.'' The statute requires that hospitals must pay all of substantially all of the costs for training in a nonhospital site in order to count FTE residents training in the nonhospital setting for Medicare graduate medical education (GME) payment purposes. We are proposing to revise § 413.75(b) to introduce a new definition of ''all or substantially all of the costs for the training program in the nonhospital setting'' to mean, at least 90 percent of the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries attributable to direct GME. In addition, we are proposing to revise § 412.105(f)(1)(ii)(C) for IME and § 413.78 to reflect this new definition of ''all or substantially all'' of the GME costs in a nonhospital setting, effective for cost reporting periods beginning on or after July 1, 2007.

In section XVI. of this preamble, we analyze the impact of the proposed changes presented in this proposed rule on Medicare expenditures, Medicare-

participating LTCHs, and Medicare beneficiaries.

III. Long-Term Care Diagnosis-Related Group (LTC–DRG) Classifications and Relative Weights

[If you choose to comment on issues in this section, please include the caption ''LTC–DRG CLASSIFICATIONS AND RELATIVE WEIGHTS'' at the beginning of your comments.]

A. Background

Section 123 of the BBRA requires that the Secretary implement a PPS for LTCHs (that is, a per discharge system with a DRG-based patient classification system reflecting the differences in patient resources and costs. Section 307(b)(1) of the BIPA modified the requirements of section 123 of the BBRA by requiring that the Secretary examine ''the feasibility and the impact of basing payment under such a system [the LTCH PPS] on the use of existing (or refined) hospital DRGs that have been modified to account for different resource use of LTCH patients, as well as the use of the most recently available hospital discharge data.''

In accordance with section 123 of the BBRA as amended by section 307(b)(1) of the BIPA and § 412.515, we use information derived from LTCH PPS patient records to classify these cases into distinct LTC–DRGs based on clinical characteristics and estimated resource needs. The LTC–DRGs used as the patient classification component of the LTCH PPS correspond to the hospital inpatient DRGs in the IPPS. We assign an appropriate weight to the LTC–DRGs to account for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs.

In a departure from the IPPS, we use low volume LTC–DRGs (less than 25 LTCH cases) in determining the LTC–DRG weights, since LTCHs do not typically treat the full range of diagnoses as do acute care hospitals. To manage the large number of low volume DRGs (all DRGs with fewer than 25 cases), we group low volume DRGs into 5 quintiles based on average charge per discharge. (A listing of the current composition of low volume quintiles used in determining the FY 2007 LTC–DRG relative weights appears in the FY 2007 IPPS final rule (71 FR 47974 through 47978).) We also account for adjustments to payments for cases in which the stay at the LTCH is less than or equal to five-sixths of the geometric ALOS and classify these cases as SSO cases. (A detailed discussion of the application of the Lewin Group model that was used to develop the LTC–DRGs appears in the August 30, 2002 LTCH PPS final rule (67 FR 55978).)

B. Patient Classifications Into DRGs

Generally, under the LTCH PPS, a Medicare payment is made at a predetermined specific rate for each discharge; that payment varies by the LTC–DRG to which a beneficiary's stay is assigned. Cases are classified into LTC–DRGs for payment based on the following six data elements:

(1) Principal diagnosis.
(2) Up to eight additional diagnoses.
(3) Up to six procedures performed.
(4) Age.
(5) Sex.
(6) Discharge status of the patient.

As indicated in the August 30, 2002 LTCH PPS final rule, upon the discharge of the patient from a LTCH, the LTCH must assign appropriate diagnosis and procedure codes from the most current version of the International Classification of Diseases, Ninth Revision, Clinical Modification (codes) (ICD–9–CM). HIPAA Transactions and Code Sets Standards regulations at 45 CFR parts 160 and 162 require that no later than October 16, 2003, all covered entities must comply with the applicable requirements of subparts A and I through R of part 162. Among other requirements, those provisions direct covered entities to use the ASC X12N 837 Health Care Claim: Institutional, Volumes 1 and 2, version 4010, and the applicable standard medical data code sets for the institutional health care claim or equivalent encounter information transaction (see 45 CFR 162.1002 and 45 CFR 162.1102).

Medicare FIs enter the clinical and demographic information into their claims processing systems and subject this information to a series of automated screening processes called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a DRG can be made. During this process, the following types of cases are selected for further development:

- Cases that are improperly coded. (For example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.6, Radical abdominal hysterectomy, would be an inappropriate code for a male.)
- Cases including surgical procedures not covered under Medicare. (For example, organ transplant in a non-approved transplant center.)
- Cases requiring more information. (For example, ICD–9–CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 262, Other severe protein-calorie malnutrition, contains all appropriate digits, but if it is reported with either fewer or more than 3 digits, the claim will be rejected by the MCE as invalid.)
- Cases with principal diagnoses that do not usually justify admission to the hospital. (For example, code 437.9, unspecified cerebrovascular disease. While this code is valid according to the ICD–9–CM coding scheme, a more precise code should be used for the principal diagnosis.)

After screening through the MCE, each claim will be classified into the appropriate LTC–DRG by the Medicare LTCH GROUPER software. As indicated in the August 30, 2002 LTCH PPS final rule, the Medicare GROUPER software, which is used under the LTCH PPS, is specialized computer software, and is the same GROUPER software program used under the IPPS. The GROUPER software was developed as a means of classifying each case into a DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the LTC–DRG assignment, the Medicare FI determines the prospective payment by using the Medicare PRICER program, which accounts for hospital-specific adjustments. Under the LTCH PPS, we provide an opportunity for the LTCH to review the LTC–DRG assignments made by the FI and to submit additional information within a specified timeframe as specified in § 412.513(c).

The GROUPER software is used both to classify past cases to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update under both the IPPS (§ 412.60(e)) and the LTCH PPS (§ 412.517). As discussed in greater detail in sections III.D. and E. of this preamble, with the implementation of section 503(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), there is the possibility that one feature of the GROUPER software program may be updated twice during a Federal FY (October 1 and April 1) as required by the statute for the IPPS (69 FR 48954 through 48957). Specifically, as we discussed in the FY 2007 IPPS final rule, diagnosis and procedure codes for new medical technology may be created

and added to existing DRGs in the middle of the Federal FY on April 1 (71 FR 47959 and 47971). However, this policy change will have no effect on the LTC–DRG relative weights (during the FY), which will continue to be updated only once a year (October 1), nor will there be any impact on Medicare payments under the LTCH PPS during the FY as result of this policy. The use of the ICD–9–CM code set is also compliant with the current requirements of the Transactions and Code Sets Standards regulations at 45 CFR parts 160 and 162, published in accordance with HIPAA.

C. Organization of DRGs

The DRGs are organized into 25 major diagnostic categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are assigned based on a surgical hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures by resource intensity. The GROUPER software program does not recognize all ICD–9–CM procedure codes as procedures that affect DRG assignment, that is, procedures which are not surgical (for example, EKG), or minor surgical procedures (for example, 86.11, Biopsy of skin and subcutaneous tissue).

The medical DRGs are generally differentiated on the basis of diagnosis. Both medical and surgical DRGs may be further differentiated based on age, sex, discharge status, and presence or absence of complications or comorbidities (CC). We note that CCs are defined by certain secondary diagnoses not related to, or not inherently a part of, the disease process identified by the principal diagnosis. (For example, the GROUPER software would not recognize a code from the 800.0x series, Skull fracture, as a CC when combined with principal diagnosis 850.4, Concussion with prolonged loss of consciousness, without return to preexisting conscious level.) In addition, we note that the presence of additional diagnoses does not automatically generate a CC, as not all DRGs recognize a comorbid or complicating condition in their definition. (For example, DRG 466, Aftercare without History of Malignancy as Secondary Diagnosis, is based solely on the principal diagnosis, without consideration of additional diagnoses for DRG determination.)

As discussed in greater detail in the FY 2007 IPPS final rule (71 FR 47898 through 47912 and 47973), in its March 2005 Report to Congress, ''Physician-Owned Specialty Hospitals,'' MedPAC recommended that the Secretary improve payment accuracy in the hospital IPPS by, among other things, ''refining the current DRGs to more fully capture differences in severity of illness among patients.'' (Recommendation 1, p. 93.) As we discussed in that same final rule (71 FR 47973), although we did not adopt a new severity-adjusted patient classification system under the IPPS, for FY 2007, we refined the current CMS–DRG patient classification system by creating 20 new CMS–DRGs and modifying 32 others across 13 different clinical areas for Version 24.0 of the GROUPER software that we expect will improve the CMS–DRG system's recognition of severity of illness for FY 2007. As noted previously in this section, the LTCH PPS patient classification system (that is, LTC–DRGs) is the same patient classification system used under the IPPS (that is, CMS DRGs). As such, the updates to the CMS DRG patient classification system used under the IPPS for FY 2007 (GROUPER Version 24.0), are the updates that apply to the LTC–DRGs used under the LTCH PPS for FY 2007.

In the FY 2007 IPPS final rule, we present the changes to the DRG patient classification system for FY 2007 (71 FR 47939 through 47962). In that rule, we adopted the IPPS GROUPER Version 24.0 for FY 2007 to process LTCH PPS claims for LTCH discharges occurring from October 1, 2006 through September 30, 2007 (71 FR 47973). As noted above in this section and as we also discussed in the FY 2007 IPPS final rule, in its March 1, 2005 Report to Congress on Medicare Payment Policy (page 64) and Recommendation 1 in the 2005 Report to Congress on Physician-Owned Specialty Hospitals, MedPAC recommended that CMS, among other things, refine the current DRGs under the IPPS to more fully capture differences in severity of illness among patients. In evaluating this MedPAC recommendation for the IPPS, we evaluated the APR–DRG Grouper used by MedPAC in its analysis. Based on that analysis, we concur with MedPAC that the modified version of the APR DRGs would account more completely for differences in severity of illness and associated costs among hospitals. However, as we clarified in the FY 2007 IPPS proposed rule and reiterated in section II.C.6. of the FY 2007 IPPS final rule, there are still further changes that are important to make to the consolidated severity-adjusted (CS) DRG system before it is ready for adoption. Therefore, in the FY 2007 IPPS final rule, we did not adopt a new CS DRG system, such as the APR DRGs or a modified version of the APR DRGs, under the IPPS. However, we refined the current CMS–DRG patient classification system by creating 20 new CMS–DRGs and modifying 32 others across 13 different clinical areas for Version 24.0 of the GROUPER software that we expect will improve the CMS DRG system's recognition of severity of illness for FY 2007. As noted previously in this section, the LTCH PPS patient classification system (that is, LTC–DRGs) is the same patient classification system used under the IPPS (that is, CMS DRGs). As such, the updates to the CMS DRG patient classification system used under the IPPS for FY 2007 (GROUPER Version 24.0), are the updates that apply under the LTCH PPS for FY 2007.

As discussed in the FY 2007 IPPS final rule (71 FR 47906), we have engaged a contractor to assist us with completing an evaluation of alternative DRG systems for use under the IPPS that may better recognize severity than the current CMS DRGs and meet other criteria that would make them suitable to adopt for purposes of payment under the IPPS. We expect to complete this evaluation of alternative DRG systems quickly as part of moving forward on adopting a revised DRG system that better recognizes severity in the IPPS rulemaking for FY 2008.

As we also stated in that same FY 2007 IPPS final rule (71 FR 47990), if and when a severity adjusted patient classification system is adopted under the IPPS, we would need to consider whether to propose revisions to the current patient classification system under the LTCH PPS. Any proposed changes to the patient classification system would be done through notice and comment rulemaking. We believe that it is advantageous to the LTCH community to wait for CMS to first finalize its policies regarding any refinements to the DRG patient classification system used under the IPPS so that we can fully analyze what the effects of such changes would be on LTCH PPS payments. To the extent any changes to the patient classification system used under the IPPS are proposed and subsequently finalized, an analysis could then be performed to determine whether it is appropriate to propose the same patient classification for LTCHs. As noted above in this section, at that time, we would need to consider whether to propose revisions to the patient classification system

under the LTCH PPS, which, if proposed would be done through notice and comment rulemaking.

D. Proposed Update of LTC–DRGs

1. Background

As discussed in greater detail in the FY 2007 IPPS final rule (71 FR 47974), under the LTCH PPS, relative weights for each LTC–DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (that is, LTC–DRGs). To ensure that Medicare patients classified to each LTC–DRG have access to an appropriate level of services and to encourage efficiency, each year based on the best available data, we calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a LTC–DRG with a relative weight of 1. Under § 412.517, the LTC–DRG classifications and weighting factors (that is, relative weights) are adjusted annually to reflect changes in factors affecting the relative use of LTCH resources, including treatment patterns, technology and number of discharges. For FY 2007, the LTC–DRG classifications and relative weights were updated based on LTCH data from the FY 2005 MedPAR file, which contained hospital bills data from the March 2006 update. The LTC–DRG patient classification system consists of 538 DRGs that formed the basis of the FY 2007 LTCH PPS GROUPER program. The 538 LTC–DRGs included two ''error DRGs.'' As in the IPPS, we included two error DRGs in which cases that cannot be assigned to valid DRGs will be grouped. These two error DRGs are DRG 469 (Principal Diagnosis Invalid as a Discharge Diagnosis) and DRG 470 (Ungroupable). The other 536 LTC–DRGs are the same DRGs used in the IPPS GROUPER program for FY 2007 (Version 24.0).

In the past, the annual update to the CMS–DRGs was based on the annual revisions to the ICD–9–CM codes and was effective each October 1. The ICD–9–CM coding update process was revised as discussed in greater detail in the FY 2005 IPPS final rule (69 FR 48953 through 48957). Specifically, section 503(a) of the MMA includes a requirement for updating diagnosis and procedure codes for twice a year instead of the current process of annual updates on October 1 of each year. This requirement is included as part of the amendments to the Act relating to recognition of new medical technology under the IPPS. (For additional information on this provision, including its implementation and its impact on the LTCH PPS, refer to the FY 2005 IPPS final rule (69 FR 48953 through 48957) and the RY 2006 LTCH PPS final rule (70 FR 24172 through 24177).)

As noted above in this section, with the implementation of section 503(a) of the MMA, there is the possibility that one feature of the GROUPER software program may be updated twice during a Federal FY (October 1 and April 1) as required by the statute for the IPPS. Specifically, diagnosis and procedure codes for new medical technology may be created and added to existing DRGs in the middle of the Federal FY on April 1. No new LTC–DRGs will be created or deleted. Consistent with our current practice, any changes to the DRGs or relative weights will be made at the beginning of the next Federal FY (October 1). Therefore, there will not be any impact on LTC–DRG payments under the LTCH PPS until the following October 1 (although the new ICD–9–CM diagnosis and procedure codes would be recognized April 1). The use of the ICD–9–CM code set is also compliant with the current requirements of the Transactions and Code Sets Standards regulations at 45 CFR parts 160 and 162, issued under HIPAA.

As we explained in the FY 2007 IPPS final rule, annual changes to the ICD–9–CM codes historically were effective for discharges occurring on or after October 1 each year (71 FR 47971). Thus, the manual and electronic versions of the GROUPER software, which are based on the ICD–9–CM codes, were also revised annually and effective for discharges occurring on or after October 1 each year. The patient classification system used under the LTCH PPS (LTC–DRGs) is the same DRG patient classification system used under the IPPS, which historically had been updated annually and was effective for discharges occurring on or after October 1 through September 30 each year. As we mentioned previously in this section, the ICD–9–CM coding update process was revised as a result of the implementation of section 503(a) of the MMA, which includes a requirement for updating diagnosis and procedure codes as often as twice a year instead of the current process of annual updates on October 1 of each year (as discussed in greater detail in section II.D.10. of the FY 2007 IPPS final rule (71 FR 47957 through 47960)). We currently use the ICD–9–CM codes as the code set for diagnoses and procedures. Therefore, the ICD–9–CM codes currently used under both the IPPS and LTCH PPS may be updated as often as twice a year. As described above in this section, this requirement is included as part of the amendments to the Act relating to recognition of new medical technology under the IPPS.

Despite the fact that aspects of the GROUPER software may be updated to recognize any new technology ICD–9–CM codes, there will be no impact on either LTC–DRG assignments or payments under the LTCH PPS at that time. That is, changes to the LTC–DRGs (such as the creation or deletion of LTC–DRGs) and the relative weights will continue to be updated in the manner and timing (October 1) as they are now. Updates to the GROUPER software for both the IPPS and the LTCH PPS (for relative weights and the creation or deletion of DRGs) are made in the annual IPPS proposed and final rules and are effective each October 1. We have also explained that since we do not publish a mid-year IPPS rule, we will assign any new diagnosis or procedure codes implemented on April 1 to the same DRG in which its predecessor code was assigned, so that there will be no impact on the DRG assignments until the following October 1. Any coding updates will be available through the Web sites provided in section III.E. of this preamble and through the *Coding Clinic for ICD–9–CM.* Publishers and software vendors currently obtain code changes through these sources to update their code books and software system. If new codes are implemented on April 1, revised code books and software systems, including the GROUPER software program, will be necessary because we must use current ICD–9–CM codes. Therefore, for purposes of the LTCH PPS, because each ICD–9–CM code must be included in the GROUPER algorithm to classify each case into a LTC–DRG, the GROUPER software program used under the LTCH PPS would need to be revised to accommodate any new codes.

In implementing section 503(a) of the MMA, there will only be an April 1 update if diagnosis and procedure codes are requested and approved. We note that any new codes created for April 1 implementation will be limited to those diagnosis and procedure code revisions primarily needed to describe new technologies and medical services. However, we reiterate that the process of discussing updates to the ICD–9–CM has been an open process through the ICD–9–CM Coordination and Maintenance (C&M) Committee since 1995. Requestors will be given the opportunity to present the merits for a new code and make a clear and convincing case for the need to update

ICD–9–CM codes through an April 1 update.

At the September 2006 ICD–9–CM C&M Committee meeting, there were no requests for an April 1, 2007 implementation of ICD–9–CM codes, and therefore, the next update to the ICD–9–CM coding system will not occur until October 1, 2007 (FY 2008). Presently, as there were no coding changes suggested for an April 1, 2007 update, the ICD–9–CM coding set implemented on October 1, 2006, will continue through September 30, 2007 (FY 2007). The next update to the LTC–DRGs and relative weights for FY 2008 will be presented in the FY 2008 IPPS proposed and final rules. Furthermore, we would notify LTCHs of any revisions to the GROUPER software used under the IPPS and LTCH PPS that would be implemented April 1, 2008. As noted previously in this section, in the FY 2007 IPPS final rule (71 FR 47973), we used Version 24.0 of the CMS GROUPER, which was used under the IPPS for FY 2007, to classify cases for LTCH PPS discharges that would occur on or after October 1, 2006 and on or before September 30, 2007.

2. Proposed Budget Neutrality (BN) Requirement for the Annual LTC–DRG Update

As noted above in this section, currently under § 412.517, the LTC–DRG classifications and relative weights are adjusted annually to reflect changes in factors affecting the relative use of LTCH resources, such as treatment patterns, technology and number of discharges. Currently, there are no statutory or regulatory requirements that the annual update to the LTC–DRG classifications and relative weights be done in a budget neutral manner. Historically, since the initial implementation of the LTCH PPS in FY 2003, we have updated the LTC–DRG relative weights each year without a BN adjustment based on the most recent available LTCH claims data, which reflect current LTCH patient mix and coding practices, and appropriately reflected more or less resource use than the previous year's LTC–DRG relative weights (71 FR 47991). When we proposed changes to the LTC–DRGs for FY 2007 in the FY 2007 IPPS proposed rule, we estimated that those proposed changes to the LTC–DRG classifications and relative weights would result in about an estimated 1.4 percent decrease in estimated aggregate LTCH PPS payments (71 FR 24413). As we discussed in the FY 2007 IPPS final rule (71 FR 47991), several commenters, including MedPAC, urged us to establish a BN requirement for the annual reclassification and recalibration of the LTC–DRGs so that, in future years, the LTCH PPS could avoid an estimated decrease in estimated aggregate payments, such as the estimated 1.4 percent decrease that resulted from the proposed update to the LTC–DRGs and relative weights for FY 2007. In response to previous proposed annual updates to the LTC–DRG relative weights, we also received comments recommending that a BN adjustment be applied in determining the LTC–DRG relative weights to mitigate LTCH PPS payment fluctuations. (See the FY 2005 IPPS final rule (69 FR 48999 through 49000), and the FY 2006 IPPS final rule (70 FR 47333 through 47334).)

In response to those comments, we explained that we understood the commenters' concern with the estimated decrease in payments under LTCH PPS based upon the changes in the LTC–DRGs and relative weights proposed for FY 2007. However, as we discussed in the FY 2007 IPPS final rule, we did not postpone the proposed FY 2007 reclassification and recalibration of the LTC–DRGs, nor did we implement those changes in a budget neutral manner. We noted several reasons for the annual fluctuations in LTC–DRG relative weights that have resulted in both estimated increases and decreases in estimated aggregate LTCH PPS payments in the 4 years since the implementation of the LTCH PPS in FY 2003. Specifically, we reiterated our belief that several factors have affected the changes to the LTC–DRG relative weights over the past 4 years, including actual improvements in coding so that cases are appropriately assigned to LTC–DRGs. We also explained that, as noted above in this section, historically we recalibrated the LTC–DRG relative weights each year based on the most recent available LTCH claims data, which reflect current LTCH patient mix and coding practices, and appropriately reflects more or less resource use than the previous year's LTC–DRG relative weights. The intended purpose of the annual recalibration of the LTC–DRG relative weights is to reflect any variation in coding practices and charges from the previous year and to help ensure that the LTC–DRG relative weights in the upcoming fiscal year will result in appropriate and accurate payments to LTCHs for the resources they expend to treat their Medicare patients. (71 FR 47984 through 47989)

We also reminded the commenters that under the IPPS, there is a statutory requirement that the annual DRG reclassification and recalibration changes be made in a manner that assures that the estimated aggregate payments are neither greater than nor less than the estimated aggregate payments that would have been made without the changes, but there is no corresponding statutory requirement under the LTCH PPS. However, we noted that, given the considerable discretion granted to the Secretary under section 123 of the BBRA and section 307(b) of the BIPA of 2000 to develop the LTCH PPS, it is possible that, at some point, the Secretary would consider using this broad authority to establish a BN policy for the annual update of the LTC–DRG classifications and relative weights. We further stated that if we find that it would be appropriate to propose making the updates to the LTC–DRGs and relative weights in a budget neutral manner, the public would have the opportunity to submit comments on any proposed change during the rulemaking process.

As we explained in the FY 2007 IPPS final rule (71 FR 47985 through 47986), a LTCH's case-mix index (CMI) is defined as its case weighted average LTC–DRG relative weight for all its discharges in a given period. Changes in CMI consist of two components: ''real'' CMI changes and ''apparent'' CMI changes. Real CMI increase is defined as the increase in the average LTC–DRG relative weights resulting from the hospital's treatment of more resource intensive patients. Apparent CMI increase is defined as the increase in CMI due to changes in coding practices. The computed (or observed) CMI increase is defined as real CMI increase (due to an increase in patient severity) plus the increase due to changes in coding practices (including better documentation of the medical record by physicians and more complete coding of the medical record by coders). If LTCH patients have more costly impairments, lower functional status, or increased comorbidities, and thus require more resources in the LTCH, we consider this a real change in case-mix. Conversely, if LTCH patients have the same impairments, functional status, and comorbidities but are coded differently resulting in higher payment, we consider this an apparent change in case-mix. We believe that changes in payment rates, including the LTC–DRG relative weights, should accurately reflect changes in LTCHs' true cost of treating patients (real CMI increase), and should not be influenced by changes in coding practices (apparent CMI increase).

As stated above in this section, apparent CMI increase results from cases being grouped to a LTC–DRG with a higher weight than it would be

without such changes in coding practices. As we discussed in the FY 2007 IPPS final rule (71 FR 48343 through 48344), in discussing the impact of the changes to the LTC–DRG classifications and relative weights established for FY 2007 that were estimated to result in an aggregate decrease in LTCH PPS payments of approximately 1.3 percent, we explained that changes in coding practices (rather than patient severity) primarily resulted in fluctuations in the LTC–DRG relative weights in the past. Specifically, based on an analysis of FY 2005 LTCH claims data, we continued to observe that the average LTC–DRG relative weight decreases due to an increase of relatively lower charge cases being assigned to LTC–DRGs with higher relative weights in the prior year. Contributing to this increase in these relatively lower charge cases being assigned to LTC–DRGs with higher relative weights in the prior year are improvements in coding practices, which are typical when moving from a reasonable cost-based payment system to a PPS. The impact of including cases with relatively lower charges into LTC–DRGs that had a relatively higher relative weight in the previous version of the GROUPER software is a decrease in the average relative weight for those LTC–DRGs in the updated version of the GROUPER software.

We note that this same phenomenon of relatively lower charge cases being assigned to LTC–DRGs with higher relative weights in the prior year was also observed when we analyzed the LTCH claims data from FY 2003 and FY 2004 to update the LTC–DRG relative weights for FY 2005 and FY 2006, respectively (see the FY 2005 IPPS final rule (69 FR 48999) and the FY 2006 IPPS final rule (70 FR 47701 through 47702).) However, this phenomenon was more notable based on the FY 2004 LTCH claims data that were used to update the LTC–DRG relative weights for FY 2006, where the changes to the LTC–DRG weights established were estimated to result in a decrease in aggregate LTCH PPS payments of 4.2 percent (as compared to the estimated 1.3 percent decrease in aggregate LTCH PPS payments based on the FY 2005 LTCH claims data used to determine the FY 2007 LTC–DRG relative weights). Because the estimated decrease in aggregate LTCH PPS payments due to the update to the LTC–DRG relative weights based on more recent (FY 2005) LTCH claims data was significantly lower (1.3 percent estimated based on the LTC–DRG changes for FY 2007) than it was based on FY 2004 LTCH claims data (4.2 percent estimated based on the LTC–DRG changes for FY 2006), we believe that, as LTCHs have become more familiar with the ICD–9–CM coding principles and guidelines used under a DRG-based system, annual changes in LTCH CMI are approaching the point where the observed CMI increase is primarily due to changes in real CMI (that is, increased patient severity) rather than apparent CMI (that is, changes in coding practices). In other words, because we have observed that, over time as LTCHs have gained more experience with ICD–9–CM coding, estimated changes in LTCH PPS payments due to recalibration of the LTC–DRG relative weights based on more recent claims data (for example, the FY 2007 LTC–DRG relative weights calculated from FY 2005 LTCH claims data as compared to the FY 2006 LTC–DRG relative weights calculated from FY 2004 LTCH claims data) have diminished over time. That is, we have estimated smaller fluctuations in aggregate LTCH PPS payments as a result of the annual recalibration of the LTC–DRG relative weights based on more recent LTCH claims data generated after the implementation of the LTCH PPS (for example, the 1.3 percent estimated decrease in aggregate LTCH PPS payments for FY 2007 based on FY 2004 LTCH claims data as compared to the 4.2 percent estimated decrease in aggregate LTCH PPS payments for FY 2007 based on FY 2005 LTCH claims data). For these reasons, we believe that LTCH coding practices have stabilized such that the most recent available LTCH claims data now primarily reflect changes in the resources used by the average LTCH patient in a particular LTC–DRG (and not changes in coding practices). Thus, we believe that the most recent available data (as described below in this section) mainly reflect the true costs of treating LTCH patients, and as discussed above, we believe changes in payment rates, including the LTC–DRGs, should reflect such costs.

Furthermore, a LTCH CMI analysis based on the most recent available LTCH claims data, which is discussed in section IV.C. of this preamble, also supports our belief that observed CMI increase is primarily due to changes in real CMI (that is, increased patient severity) rather than apparent CMI (that is, changes in coding practices). Specifically, this CMI analysis indicates that changes in LTCH coding practices, which resulted in fluctuations in the LTC–DRG relative weights in the past, appear to be stabilizing as LTCHs have become more familiar with a DRG-based system. As discussed in section IV.C.2. of this preamble, the overall observed change in LTCH CMI from FY 2003 compared to FY 2004 was an increase of approximately 6.75 percent while the overall observed change in LTCH CMI from FY 2004 compared to FY 2005 was an increase of approximately 3.49 percent, which is only about half of the LTCH CMI growth measured from the prior period (that is, the 6.75 percent from FY 2003 to FY 2004). Furthermore, preliminary analysis of FY 2006 LTCH claims data, which reflects over 3 full years of experience under the LTCH PPS for most LTCHs, shows an even smaller overall observed CMI increase of about 1.9 percent from FY 2005 compared to FY 2006. Again, the observed CMI increase from FY 2005 to FY 2006 is only about half of the LTCH CMI growth measured from the prior period (that is, the 3.49 percent from FY 2004 to FY 2005). Because this LTCH CMI analysis shows that observed CMI is declining, we believe that LTCH coding practices have stabilized such that changes in LTCH CMI are now primarily due to changes in real CMI (that is, increased patient severity) rather than apparent CMI (that is, changes in coding practices). In other words, because we believe that the observed annual CMI increase is primarily ''real'' and not ''apparent,'' it is no longer necessary to update the LTC–DRGs in a non-budget neutral manner (as discussed in greater detail below in this section). As stated above in this section, we believe that changes in payment rates, including the LTC–DRG relative weights, should accurately reflect changes in LTCHs' true cost of treating patients (real CMI increase) and should not be influenced by changes in coding practices (apparent CMI increase).

In light of these facts, in order to mitigate estimated fluctuations in estimated aggregate LTCH PPS payments, as urged by past commenters, we have given further consideration to the issue of establishing a BN requirement for annual LTC–DRG reclassification and recalibration. Therefore, in this proposed rule, under the broad authority conferred upon the Secretary under section 123 of the BBRA as amended by section 307(b) of the BIPA to develop the LTCH PPS, we are proposing that, beginning with the LTC–DRG update for FY 2008, the annual update to the LTC–DRG classifications and relative weights would be done in a budget neutral manner such that estimated aggregate LTCH PPS payments would be unaffected, that is, would be neither greater than nor less than the estimated aggregate LTCH PPS payments that

would have been made without the proposed LTC–DRG classification and relative weight changes. Accordingly, we are proposing to revise § 412.517 to specify that annual changes to the LTC–DRG classifications and the recalibration of the LTC–DRG relative weights are made in a budget neutral manner such that estimated aggregate LTCH PPS payments are not affected. We believe that it would be appropriate to update the LTC–DRG classifications and relative weights in a budget neutral manner at this time for the reasons discussed below.

As noted above in this section, the relative weight for each LTC–DRG represents the resources needed by an average inpatient LTCH case in that LTC–DRG, such that LTCH cases in a LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a LTC–DRG with a relative weight of 1. As also noted above in this section, in the past when we recalibrated the LTC–DRG relative weights each year without a BN adjustment based on the most recent available LTCH claims data, we believe that the resulting LTC–DRG relative weights appropriately reflected more or less resource use than the previous year's LTC–DRG relative weights, and that the estimated aggregate payment changes were appropriate given that the LTCH claims data used to determine those LTC–DRG relative weights reflected changes in coding practices, as well as changes in actual resource use. Historically, we have not updated the LTC–DRGs in a budget neutral manner because, as discussed above in this section, we believed that past fluctuations in the LTC–DRG relative weights were primarily due to changes in LTCH coding practices, which included both ''real'' and ''apparent'' changes in LTCHs'' case-mix. We believe that changes in the LTCH PPS payment rates, including the LTC–DRG relative weights, should accurately reflect changes in LTCHs' true cost of treating patients (real CMI increase), and should not be influenced by changes in coding practices (apparent CMI increase). Therefore, in the past we did not update the LTC–DRGs in a budget neutral manner so that ''apparent'' CMI changes were not permanently built into the LTCH PPS payment rates. Because LTCH 2006 claims data does not appear to significantly reflect changes in LTCH coding practices in response to the implementation of the LTCH PPS (as explained above in this section), we believe that it may be appropriate to update the LTC–DRGs so that estimated aggregate LTCH PPS payments would neither increase or decrease since we believe that changes in the LTC–DRG classifications and relative weights should accurately reflect changes in LTCHs' resource use (that is, true cost of treating patients) and should not be influenced by changes in coding practices, and that the most recent such LTCH claims data primarily reflects changes in the resources needed by an average LTCH case in a particular LTC–DRG (and not changes in coding practices). Thus, we now believe it would be reasonable and appropriate to update the LTC–DRGs in a budget neutral manner, beginning in FY 2008, so that estimated aggregate payments under the LTCH PPS would be unaffected (that is, estimated aggregate LTCH PPS payments would not be greater than or less than they would have been without the proposed LTC–DRG classification and relative weight changes) by any changes resulting from the annual reclassification and recalibration of the LTC–DRGs. Updating the LTC–DRGs in a budget neutral manner would result in an annual update to the individual LTC–DRG classifications and relative weights based on the most recent available data to reflect changes in relative LTCH resource use; however, the LTC–DRG relative weights would be uniformly adjusted to ensure that estimated aggregate payments under the LTCH PPS would not be affected (that is, decreased or increased).

Under this proposal, we intend to update the LTC–DRG classifications and relative weights for FY 2008 based on the best available data at the time to allow for changes in factors affecting hospital resource use, including but not limited to, practice patterns and new technology. This would be done in a budget neutral manner, such that estimated aggregate payments under the LTCH PPS would neither decrease or increase as a result of the changes due to the annual reclassification and recalibration of the LTC–DRGs. Because, under this proposal, we would continue to use the most recent available LTCH data, the updated LTC–DRG relative weights would continue to reflect changes in LTCH resource use (as is the case under the current (non-budget neutral) LTC–DRG update methodology). Thus, for example, if the most recent LTCH claims data showed that the resource use for hypothetical LTC–DRG ''ABC'' is double the resource use for hypothetical LTC–DRG ''XYZ,'' then the value of the relative weight for LTC–DRG ''ABC'' would be about twice the value of relative weight for LTC–DRG ''XYZ.''

In addition to accounting for changes in relative resource use, to include a BN requirement for the annual update to the LTC–DRGs under this proposal, the updated LTC–DRG relative weights would need to be uniformly adjusted to ensure that estimated aggregate LTCH PPS payments would not be affected. That is, a BN factor would need to be computed to ensure that the LTC–DRG reclassification and recalibration process, by itself, neither increases nor decreases estimated aggregate LTCH PPS payments. To accomplish BN when annually updating the LTC–DRG classifications and relative weights under the proposed change to § 412.517, we are proposing to use a method that is similar to the methodology used under the IPPS. Specifically, we are proposing that after recalibrating the LTC–DRG relative weights, as we do under our existing methodology (as described in detail in the FY 2007 IPPS final rule (71 FR 47978 through 47981)), we would apply a single BN adjustment factor (which would be published annually in the IPPS proposed and final rules when we update the LTC–DRGs and relative weights) to each of those relative weights. The LTC–DRG BN adjustment factor would ensure that estimated aggregate LTCH PPS payments (based on the most recent available LTCH claims data) after recalibration (the ''new'' relative weights) would be equal to estimated aggregate LTCH PPS payments (for the same most recent available LTCH claims data) before recalibration (the current or ''old'' relative weights). (Information on the IPPS DRG BN adjustment can be found in the FY 2007 IPPS final rule (71 FR 47970).) As noted above in this section, the annual update to the LTC–DRG classifications and relative weights provided for under the current § 412.517 is presented in the IPPS proposed and final rules, and under the proposed changes to § 412.517 presented in this proposed rule, the proposed BN update to the LTC–DRGs for FY 2008 would be presented in the FY 2008 IPPS proposed rule in the spring of 2007.

E. ICD–9–CM Coding System

1. Uniform Hospital Discharge Data Set (UHDDS) Definitions

Because the assignment of a case to a particular LTC–DRG will help determine the amount that will be paid for the case, it is important that the coding is accurate. Classifications and terminology used in the LTCH PPS are consistent with the ICD–9–CM and the UHDDS, as recommended to the Secretary by the National Committee on Vital and Health Statistics (''Uniform

Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics (NCHS), April 1980'') and as revised in 1984 by the Health Information Policy Council (HIPC) of the Department of Health and Human Services (HHS).

We note that the ICD–9–CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the HIPAA Administrative Simplification Act of 1996 (45 CFR part 162). Furthermore, the UHDDS was used as a standard for the development of policies and programs related to hospital discharge statistics by both governmental and nongovernmental sectors for over 30 years. In addition, the following definitions (as described in the 1984 Revision of the UHDDS, approved by the Secretary for use starting January 1986) are requirements of the ICD–9–CM coding system, and have been used as a standard for the development of the CMS-DRGs:

- Diagnoses are defined to include all diagnoses that affect the current hospital stay.
- Principal diagnosis is defined as the condition established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care.
- Other diagnoses (also called secondary diagnoses or additional diagnoses) are defined as all conditions that coexist at the time of admission, that develop subsequently, or that affect the treatment received or the LOS or both. Diagnoses that relate to an earlier episode of care that have no bearing on the current hospital stay are excluded.
- All procedures performed will be reported. This includes those that are surgical in nature, carry a procedural risk, carry an anesthetic risk, or require specialized training.

We provide LTCHs with a 60-day window after the date of the notice of the initial LTC–DRG assignment to request review of that assignment of the discharge to a LTC–DRG. Additional information may be provided by the LTCH to the FI as part of that review.

2. Maintenance of the ICD–9–CM Coding System

The ICD–9–CM C&M Committee is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, that is charged with maintaining and updating the ICD–9–CM system. The C&M Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The C&M Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the Tabular List and Alphabetic Index for Diseases, while we have the lead responsibility for the ICD–9–CM procedure codes included in the Tabular List and Alphabetic Index for Procedures. The C&M Committee encourages participation by health-related organizations in this process and holds public meetings for discussion of educational issues and proposed coding changes twice a year at the CMS Central Office located in Baltimore, Maryland. The agenda and dates of the meetings can be accessed on our Web site at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes*.

As discussed previously in this section, for the IPPS, section 503(a) of the MMA includes a requirement for updating diagnosis and procedure codes twice a year instead of annual updates on October 1 of each year. This requirement will improve the recognition of new technologies under the IPPS by accounting for them in the GROUPER software at an earlier date. Because this statutory requirement could have a significant impact on health care providers, coding staff, publishers, system maintainers, and software systems, among others, we solicited comments on our proposed provisions to implement this requirement as part of the FY 2005 IPPS proposed rule (69 FR 28220 through 28221). We responded to comments and published our new policy regarding the updating of diagnosis and procedure codes (currently the ICD–9–CM) in the FY 2005 IPPS final rule (69 FR 48953 through 48957). In addition, we established a policy for the possibility of an April 1 ICD–9–CM diagnosis and procedure code update in the RY 2006 LTCH PPS final rule (70 FR 24176) since LTCH systems would be expected to recognize and report those new codes through the channels described in this section even though no DRG additions or deletions or changes to relative weights will occur prior to the usual October 1 update. (For more detailed information on the affect of the statutory mandates directed at the IPPS as amended by section 503(a) of the MMA, refer to the FY 2005 IPPS final rule (69 FR 48954 through 48957) and the RY 2007 LTCH PPS final rule (71 FR 27806 through 27808)).

Current addendum and code title information is published on the CMS Web site at: *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/04_addendum.asp*. Summary tables showing new, revised, and deleted code titles are also posted on the CMS Web site at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/07_summarytables.asp*. Information on ICD–9–CM diagnosis codes can be found at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/*. Information on new, revised, and deleted ICD–9–CM codes is also available in the American Hospital Association (AHA) publication, *the Coding Clinic for ICD–9–CM.* AHA also distributes information to publishers and software vendors. We also send copies of all ICD–9–CM coding changes to our contractors for use in updating their systems and providing education to providers. In addition, of particular note to LTCHs are the invalid diagnosis codes (Table 6C) and the invalid procedure codes (Table 6D) located in the annual proposed and final rules for the IPPS. Claims with invalid codes are not processed by the Medicare claims processing system.

3. Coding Rules and Use of ICD–9–CM Codes in LTCHs

We continue to urge LTCHs to focus on improved coding practices. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC–DRG and produce inappropriate weighting factors at recalibration. Because of concerns raised by LTCHs concerning correct coding, we have asked the AHA to provide additional clarification and instruction on proper coding in the LTCH setting. The AHA will provide this instruction via their established process of addressing questions through their publication, the *Coding Clinic for ICD–9–CM.* Written questions or requests for clarification may be addressed to the Central Office on ICD–9–CM, American Hospital Association, One North Franklin, Chicago, IL 60606. A form for question(s) is available for download and can be mailed on AHA's Web site at: *www.ahacentraloffice.org.* In addition, current coding guidelines are available at the NCHS Web site: *http://www.cdc.gov/nchs/datawh/ftpserv/ftpicd9/ftpicd9.htm#conv.*

In conjunction with the cooperating parties (AHA, the American Health Information Management Association (AHIMA), and NCHS), we reviewed actual medical records and continue to emphasize the importance of the quality

of the documentation under the LTCH PPS. Based on the LTCH claims data analysis described above in section III.D.2. of this preamble, we fully believe that with some experience under a PPS, the quality of the documentation and coding of LTCHs has improved, as it did for the IPPS. However, because of the need for proper coding by LTCHs, the cooperating parties have plans to assist their members with continued improvement in documentation and coding issues for the LTCHs through specific questions and coding guidelines. The importance of consistent and complete documentation is emphasized in the revised ICD–9–CM Official Guidelines for Coding and Reporting: ''A joint effort between the attending physician and coder is essential to achieve complete and accurate documentation, code assignment, and reporting of diagnoses and procedures. The importance of consistent, complete documentation in the medical record cannot be overemphasized. Without this documentation, the application of all coding guidelines is a difficult, if not impossible task'' (Coding Clinic for ICD–9–CM, Fourth Quarter 2002, page 115).

To improve medical record documentation, LTCHs should be aware that if the patient is being admitted for continuation of treatment of an acute or chronic condition, guidelines at Section I.B.10 of the Coding Clinic for ICD–9-CM, Fourth Quarter 2002 (page 129) are applicable for the selection of principal diagnosis. To clarify coding advice issued in the August 30, 2002 LTCH PPS final rule (67 FR 55979), at Guideline I.B.12, Late Effects, we state that a late effect is considered to be the residual effect (condition produced) after the acute phase of an illness or injury has terminated (*Coding Clinic for ICD–9–CM,* Fourth Quarter 2002, page 129). Regarding whether a LTCH should report the ICD–9–CM code(s) for an unresolved acute condition instead of the code(s) for late effects of rehabilitation, we emphasize that each case must be evaluated on its unique circumstances and coded appropriately. Depending on the documentation in the medical record, either a code reflecting the acute condition or rehabilitation could be appropriate in a LTCH.

Since implementation of the LTCH PPS, our Medicare FIs have conducted training and provided assistance to LTCHs in correct coding. We have also issued manuals containing procedures, as well as coding instructions to LTCHs and FIs. We will continue to conduct training and provide guidance on an ''as needed'' basis. We also refer readers to the detailed discussion on correct coding practices in the August 30, 2002 LTCH PPS final rule (67 FR 55981 through 55983). Additional coding instructions and examples will be published in the *Coding Clinic for ICD–9–CM.*

F. Method for Updating the LTC–DRG Relative Weights

As discussed in the August 30, 2002 LTCH PPS final rule that implemented the LTCH PPS, under the LTCH PPS, each LTCH will receive a payment that represents an appropriate amount for the efficient delivery of care to Medicare patients (67 FR 55984). The system must be able to account adequately for each LTCH's case-mix to ensure both a fair distribution of Medicare payments and access to care for those Medicare patients whose care is more costly. Therefore, in § 412.523(c), we adjust the standard Federal PPS rate by the LTC–DRG relative weights in determining payment to LTCHs for each case.

Under this payment system, relative weights for each LTC–DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups as described in § 412.515. To ensure that Medicare patients who are classified to each LTC–DRG have access to services and to encourage efficiency, we calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a LTC–DRG with a weight of 1.

As we discussed in the FY 2007 IPPS final rule, the LTC–DRG relative weights effective under the LTCH PPS for Federal FY 2007 were calculated using the March 2006 update of FY 2005 MedPAR data and Version 24.0 of the GROUPER software (71 FR 47973). We use total days and total charges in the calculation of the LTC–DRG relative weights.

LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation or wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have (from a perspective of charges) relatively high (or low) charges. Distribution of cases with relatively high (or low) charges in specific LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we use a hospital-specific relative value method to calculate relative weights. We believe this method removes this hospital-specific source of bias in measuring average charges. Specifically, we reduce the impact of the variation in charges across providers on any particular LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. (See the FY 2007 IPPS final rule for further information on the application of the hospital-specific relative value methodology under the LTCH PPS (71 FR 47974 through 47975).)

To account for LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), we grouped those low volume LTC–DRGs into 1 of 5 categories (quintiles) based on average charges, for the purposes of determining relative weights. For FY 2007 based on the FY 2005 MedPAR data, we identified 180 LTC–DRGs that contained between 1 and 24 cases. This list of low volume LTC–DRGs was then divided into 1 of the 5 low volume quintiles, each containing 36 LTC–DRGs (180 / 5 = 36). Each of the low volume LTC–DRGs grouped to a specific quintile received the same relative weight and ALOS using the formula applied to the regular LTC–DRGs (25 or more cases). (See the FY 2007 IPPS final rule for further explanation of the development and composition of each of the 5 low volume quintiles for FY 2007 (71 FR 47975 through 47978).)

After grouping the cases in the appropriate LTC–DRG, we calculated the relative weights by first removing statistical outliers and cases with a LOS of 7 days or less. Next, we adjusted the number of cases remaining in each LTC–DRG for the effect of SSO cases under § 412.529. The short-stay adjusted discharges and corresponding charges were used to calculate ''relative adjusted weights'' in each LTC–DRG using the hospital-specific relative value method. We also adjusted the LTC–DRG relative weights to account for nonmonotonically increasing relative weights. That is, we made an adjustment if cases classified to the LTC–DRG ''with CCs'' of a ''with CC''/''without CC'' pair had a lower average charge than the corresponding LTC–DRG ''without CCs'' by assigning the same weight to both LTC–DRGs in the ''with CC''/''without CC'' pair. (See the FY 2007 IPPS final rule for further details on the steps for calculating the LTC–DRG relative weights (71 FR 47978 through 47984).)

In addition, of the 538 LTC–DRGs in the LTCH PPS for FY 2007, based on LTCH cases in the FY 2005 MedPAR files, we identified 183 LTC–DRGs for which there were no LTCH cases in the

database. That is, no patients who would have been classified to those DRGs were treated in LTCHs during FY 2005 and, therefore, no charge data were reported for those DRGs. Thus, in the process of determining the relative weights of LTC–DRGs, we were unable to determine weights for these 183 LTC–DRGs using the method described in this section of the preamble. However, since patients with a number of the diagnoses under these LTC–DRGs may be treated at LTCHs beginning in FY 2007, we assigned relative weights to each of the 183 ''no volume'' LTC–DRGs based on clinical similarity and relative costliness to one of the remaining 355 (538 − 183 = 355) LTC–DRGs for which we were able to determine relative weights, based on the FY 2005 claims data. (A list of the current no-volume LTC–DRGs and further explanation of their FY 2007 relative weight assignment can be found in the FY 2007 IPPS final rule (71 FR 47980 through 47984).)

Furthermore, for FY 2007, we established LTC–DRG relative weights of 0.0000 for heart, kidney, liver/intestinal, lung, simultaneous pancreas/kidney, and pancreas transplants (LTC–DRGs 103, 302, 480, 495, 512 and 513, respectively) because presently no LTCH meets the applicable requirements to perform Medicare covered transplant procedures. However, if in the future, a LTCH seeks to meet such requirements as a Medicare-approved transplant center to perform Medicare-covered transplant procedures, we believe that the application and approval procedure would allow sufficient time for us to propose appropriate weights for the LTC–DRGs affected. At the present time, we included these 6 transplant LTC–DRGs in the GROUPER software program for administrative purposes. As the LTCH PPS uses the same GROUPER software program for LTCHs as is used under the IPPS, removing these DRGs would be administratively burdensome.

As we noted previously in this proposed rule, there were no new ICD–9–CM code requests for an April 1, 2007 update. Therefore, Version 24.0 of the DRG GROUPER software established in the FY 2007 IPPS final rule will continue to be effective until October 1, 2007. Moreover, the LTC–DRGs and relative weights for FY 2007 established in Table 11 of that same IPPS final rule (71 FR 48321 through 48331) will continue to be effective until October 1, 2007, (just as they would have been even if there had been any new ICD–9–CM code requests for an April 1, 2007 update). Accordingly, Table 3 in Addendum A to this proposed rule lists the LTC–DRGs and their respective relative weights, geometric ALOS, and five-sixths of the geometric ALOS that we will continue to use for the period of July 1, 2007 through September 30, 2007. (This table is the same as Table 11 of the Addendum to the FY 2007 IPPS final rule.) The next update to the ICD–9–CM coding system will be presented in the FY 2008 IPPS proposed rule (since there will be no April 1, 2007 updates to the ICD–9–CM coding system). In addition, the proposed DRGs and GROUPER for FY 2008 that would be used for the IPPS and the LTCH PPS, effective October 1, 2007, will be presented in the IPPS FY 2008 proposed rule that will be published in the **Federal Register**.

IV. Proposed Changes to the LTCH PPS Payment Rates for the 2008 LTCH PPS Rate Year

[If you choose to comment on issues in this section, please include the caption ''PROPOSED CHANGES TO LTCH PPS PAYMENT RATES FOR THE 2007 LTCH PPS RATE YEAR'' at the beginning of your comments.]

A. Overview of the Development of the Payment Rates

The LTCH PPS was effective for a LTCH's first cost reporting period beginning on or after October 1, 2002. Effective with that cost reporting period, LTCHs are paid, during a 5-year transition period, a total LTCH prospective payment that is comprised of an increasing proportion of the LTCH PPS Federal rate and a decreasing proportion based on reasonable cost-based principles, unless the hospital makes a one-time election to receive payment based on 100 percent of the Federal rate as specified in § 412.533. New LTCHs (as defined at § 412.23(e)(4)) are paid based on 100 percent of the Federal rate, with no phase-in transition payments.

The basic methodology for determining LTCH PPS Federal prospective payment rates is set forth at § 412.515 through § 412.532. In this section, we discuss the proposed factors that would be used to update the LTCH PPS standard Federal rate for the 2008 LTCH PPS rate year that would be effective for LTCH discharges occurring on or after July 1, 2007 through June 30, 2008. When we implemented the LTCH PPS in the August 30, 2002 LTCH PPS final rule (67 FR 56029 through 56031), we computed the LTCH PPS standard Federal payment rate for FY 2003 by updating the best latest available (FY 1998 or FY 1999) Medicare inpatient operating and capital cost data, using the excluded hospital market basket.

Section 123(a)(1) of the BBRA requires that the PPS developed for LTCHs be budget neutral for the initial year of implementation. Therefore, in calculating the standard Federal rate under § 412.523(d)(2), we set total estimated LTCH PPS payments equal to estimated payments that would have been made under the reasonable cost-based payment methodology had the PPS for LTCHs not been implemented. Section 307(a) of the BIPA specified that the increases to the hospital-specific target amounts and the cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of the BIPA shall not be considered in the development and implementation of the LTCH PPS.

Furthermore, as specified at § 412.523(d)(1), the standard Federal rate is reduced by an adjustment factor to account for the estimated proportion of outlier payments under the LTCH PPS to total estimated LTCH PPS payments (8 percent). For further details on the development of the FY 2003 standard Federal rate, see the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56037), and for subsequent updates to the LTCH PPS Federal rate, refer to the following final rules: RY 2004 LTCH PPS final rule (68 FR 34134 through 34140), RY 2005 LTCH PPS final rule (69 FR 25682 through 25684), RY 2006 LTCH PPS final rule (70 FR 24179 through 24180), and RY 2007 LTCH PPS final rule (71 FR 27819 through 27827).

B. LTCH PPS Market Basket

1. Overview of the RPL Market Basket

Historically, the Medicare program has used a market basket to account for price increases of the services furnished by providers. The market basket used for the LTCH PPS includes both operating and capital-related costs of LTCHs because the LTCH PPS uses a single payment rate for both operating and capital-related costs. The development of the LTCH PPS standard Federal rate, using the excluded hospital with capital market basket, is discussed in further detail in the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56033).

In the August 30, 2002 final rule (67 FR 56016 through 56017 and 56030), which implemented the LTCH PPS, we established the use of the excluded hospital with capital market basket as the LTCH PPS market basket. The excluded hospital with capital market basket was also used to update the limits on LTCHs' operating costs for inflation under the TEFRA reasonable cost-based payment system. We

explained that we believe the use of the excluded hospital with capital market basket to update LTCHs' costs for inflation was appropriate because the excluded hospital market basket (with a capital component) measures price increases of the services furnished by excluded hospitals, including LTCHs. For further details on the development of the excluded hospital with capital market basket, see the RY 2004 LTCH PPS final rule (68 FR 34134 through 34137).

In the RY 2007 LTCH PPS final rule (71 FR 27810), we noted that based on our research, we did not develop a market basket specific to LTCH services. We are still unable to create a separate market basket specifically for LTCHs due to the small number of facilities and the limited amount of data that is reported (for instance, only approximately 15 percent of LTCHs reported contract labor cost data for 2002). In that same final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, we adopted the ''Rehabilitation, Psychiatric and Long-Term Care (RPL) market basket'' as the appropriate market basket of goods and services under the LTCH PPS for discharges occurring on or after July 1, 2006. Specifically, beginning with the 2007 LTCH PPS rate year, for the LTCH PPS, we adopted the use of the RPL market basket based on FY 2002 cost report data as it was the best available data. We choose to use the FY 2002 Medicare cost reports because these are the most recent, relatively complete cost data for inpatient rehabilitation facilities (IRFs), inpatient psychiatric facilities (IPF), and LTCHs.

The RPL market basket is determined based on the operating and capital costs of IRFs, IPFs and LTCHs. Since all IRFs are now paid under the IRF PPS Federal payment rate, nearly all LTCHs are paid 100 percent of the Federal rate under the LTCH PPS, and most IPFs are transitioning to payment based on 100 percent of the Federal per diem payment amount under the IPF PPS (payments to IPFs will be based exclusively on 100 percent of the Federal rate for cost reporting periods beginning on or after January 1, 2008), the RPL market basket reflects changes in the operating and capital costs for these hospitals. As we explained in that same final rule, we believe a market basket based on the data of IRFs, IPFs and LTCHs is appropriate to use under the LTCH PPS since it is the best available data that reflects the cost structures of LTCHs.

For further details on the development of the RPL market basket, including the methodology for determining the operating and capital portions of the RPL market basket, see the RY 2007 LTCH PPS final rule (71 FR 27810 through 27817).

2. Proposed Market Basket Estimate for the 2008 LTCH PPS Rate Year

Consistent with our historical practice, we estimate market basket increase based on Global Insight's forecast using the most recent available data. The most recent estimate of the RPL market basket for July 1, 2007 through June 30, 2008 (the 2008 LTCH PPS rate year), based on Global Insight's 3rd quarter 2006 forecast with history through the 2nd quarter of 2006, is 3.2 percent. Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast changes in the components of the market baskets. Consistent with our historical practice of using market basket estimates based on the most recent available data, we propose that if more recent data is available when we develop the final rule, we would use such data, if appropriate.

As discussed in greater detail in this section, for the 2008 LTCH PPS rate year, we are proposing to update the standard Federal rate by 0.71 percent. The proposed update reflects an adjustment based on the most recent market basket estimate (currently 3.2 percent) and an adjustment to account for the increase in case-mix in the prior period (FY 2005) that resulted from changes in coding practices rather than an increase in patient severity. We are also proposing that if more recent data are available (for example, a more recent estimate of the market basket), we would use such data, if appropriate, to determine the RY 2008 update in the final rule and thus, the rate update noted in regulation text could change.

C. Proposed Standard Federal Rate for the 2008 LTCH PPS Rate Year

1. Background

At § 412.523(c)(3)(ii), for LTCH PPS rate years beginning RY 2004 through RY 2006, we updated the standard Federal rate to adjust for the most recent estimate of the projected increases in prices for LTCH inpatient hospital services. We established the policy of annually updating the standard Federal rate by the increase factor described in the RY 2004 LTCH PPS final rule (68 FR 34138) because at that time we believed that was the most appropriate method for updating the LTCH PPS standard Federal rate annually for years after FY 2003. When we moved the date of the annual update of the LTCH PPS from October 1 to July 1 in the RY 2004 LTCH PPS final rule (68 FR 34138), we revised § 412.523(c)(3) to specify that for LTCH PPS rate years beginning on or after July 1, 2003, the annual update to the standard Federal rate for the LTCH PPS would be equal to the previous rate year's Federal rate updated by the most recent estimate of increases in the appropriate market basket of goods and services included in covered inpatient LTCH services. We believed that was the most appropriate method for updating the LTCH PPS standard Federal rate annually for years after RY 2004. In the RY 2007 LTCH PPS final rule (71 FR 27818), we established at § 412.523(c)(3)(iii) that the update to the standard Federal rate for the 2007 LTCH PPS rate year is zero percent. As discussed in that same final rule, we explained that rather than solely using the most recent estimate of the LTCH PPS market basket as the basis of the update factor for the Federal rate for RY 2007, we believed it was appropriate to adjust the rate to account for the changes in coding practices (rather than patient severity) as indicated by our ongoing monitoring activities.

Accordingly, we established the LTCH PPS standard Federal rate, effective from July 1, 2006 through June 30, 2007 (the 2007 LTCH PPS rate year), at $38,086.04 (71 FR 27818). Additionally, in the RY 2007 LTCH PPS proposed rule (71 FR 4742 through 4747), we provided a description of a preliminary model of an update framework under the LTCH PPS. We received few comments on that update framework preliminary model. As discussed in the RY 2007 LTCH PPS final rule (71 FR 27818 through 27819 and 27902 through 27906), although we did not propose to adopt an analytical update framework, we continued to solicit comments on the framework based on the preliminary model, using the best available data and concepts, and we may propose to adopt a framework at some time in the future. We continue to be interested in comments and suggestions on the preliminary model of an update framework under the LTCH PPS that was present in Appendix A of the RY 2007 LTCH PPS final rule (71 FR 27902 through 27906).

In the discussion that follows, we explain how we developed the proposed standard Federal rate for the 2008 LTCH PPS rate year. Specifically, we explain our rationale, which is based on our ongoing monitoring activities, for proposing an annual update to the

standard Federal rate for RY 2008 that reflects an adjustment for the most recent market basket estimate and an adjustment to account for the increase in case-mix in a prior period (FY 2005) that resulted from changes in coding practices rather than an increase in patient severity.

2. Proposed Update to the Standard Federal Rate for the 2008 LTCH PPS Rate Year

Under § 412.523(c)(3)(ii), for RY 2004 through RY 2006, the annual update to the LTCH PPS standard Federal rate was equal to the most recent estimate of increases in the prices of an appropriate market basket of goods and services included in covered inpatient LTCH services. As noted above in this section, in the RY 2007 LTCH PPS final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA to include appropriate adjustments in the establishment of the LTCH PPS, for discharges occurring on or after July 1, 2006 and on or before June 30, 2007 (RY 2007), we specified at § 412.523(c)(3)(iii) that the standard Federal rate from the previous year would be updated by a factor of zero percent. That is, the standard Federal rate for the 2007 LTCH PPS rate year remained the same as the standard Federal rate in effect during the 2006 LTCH PPS rate year (July 1, 2005 through June 30, 2006) (that is, $38,086.04).

As discussed in greater detail in the RY 2007 LTCH PPS final rule (71 FR 27819 through 27827), the update to the standard Federal rate for RY 2007 was determined based on the estimate of the LTCH PPS market basket and an analysis of LTCH case-mix, in conjunction with a review of LTCHs' margins and our ongoing LTCH monitoring activities. Specifically, from our CMI analysis, we calculated the observed CMI increase between FY 2003 and FY 2004 (6.75 percent) and determined that a significant portion of the 6.75 percent increase in CMI between FY 2003 and FY 2004 is due to changes in coding practices, which we define as ''apparent'' increase in case-mix, rather than the treatment of more resource intensive patients. We also noted that the large observed increase in LTCH case-mix was not accompanied by a corresponding increase in Medicare costs. Finally, we noted in the RY 2007 LTCH PPS final rule (71 FR 27826 through 27827) that although the most recent update of the market basket discussed in that final rule is 0.2 percent lower than the estimate of the market basket discussed in the RY 2007 LTCH PPS proposed rule, we believed that finalizing a zero percent update to the Federal rate for RY 2007 was appropriate for several reasons. First, we did not believe that there was a significant difference between the most recent estimates of the market basket for RY 2007 (3.4 percent) and the estimate used in the RY 2007 LTCH PPS proposed rule (3.6 percent). Furthermore, there could be some minimal variation in how much of the observed case-mix increase represents real case-mix changes. Finally, because the proposed update for RY 2007 at § 412.523(c)(3)(iii) explicitly specified that the RY 2007 standard Federal rate would be the previous LTCH PPS rate year updated by an update factor of zero percent, we believe some commenters may not have been aware that the final update for RY 2007 could have been different than (that is, greater than or less than) zero percent. Thus, we believed that the best approach was to adopt an update factor of zero percent in the final rule for RY 2007, which reflected both the market basket estimate and an adjustment to account for the increase in case-mix in a prior period (FY 2004) that resulted from changes in coding practices rather than an increase in patient severity. In that same final rule (71 FR 27821), we stated that the revision to § 412.523(c)(3) only addressed an update to the LTCH PPS Federal rate for the 2007 LTCH PPS rate year (§ 412.523(c)(3)(iii)), and that we would propose future revisions to § 412.523(c)(3) to address future proposed updates to the LTCH PPS Federal rates in future rate years based on an analysis of the most recent available LTCH data.

In determining the proposed update to the standard Federal rate for the 2008 LTCH PPS rate year, we again performed a CMI analysis using the most recent available LTCH claims data and found the observed CMI increase between FY 2004 and FY 2005 to be 3.49 percent. We believe that there is still some component of apparent CMI increase within the observed CMI increase of 3.49 percent that is due to coding practices rather than the treatment of more resource intensive patients (real CMI increase). Therefore, we believe it is appropriate to propose an adjustment to the market basket update for RY 2008 to account for the apparent CMI increase for a subsequent prior period (that is, CMI increase due to changes in coding practices during FY 2005). As discussed in detail in the RY 2007 LTCH PPS final rule (71 FR 27819 through 27827), in determining the update to the LTCH PPS Federal rate for RY 2007, we used 2.75 percent as the proxy for ''real'' CMI change during RY 2004. We noted in that same final rule (71 FR 27822) that we were aware of a well-established RAND Corporation (RAND) study [''Has DRG Creep Crept Up? Decomposing the Case-Mix Index Change Between 1987 and 1988'' by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC (1991)]. Based upon such study, we determined that real case-mix change for IPPS hospitals was a fairly steady 1.0 and 1.4 percent per year. We also noted that in updating IPPS rates, we have consistently assumed that real case-mix change was between 1.0 to 1.4 percent per year, which is a more conservative estimate of real case-mix increase than the 2.75 percent used in determining the update to the Federal rate for RY 2007 (71 FR 27822). However, we explained that we believed at the time it was appropriate to utilize the estimate of 2.75 percent as a proxy for real CMI increase in determining the update for RY 2007 rather than the estimates based on the RAND study (71 FR 27819 through 27827). We believe it is appropriate to factor the impact of moving from a reasonable cost-based (TEFRA) payment system to a PPS into our CMI analysis for RY 2007. In determining the update for RY 2007, we measured the observed CMI increase from FY 2003 (the year LTCHs began transitioning to PPS payments from reasonable cost-based payments) to FY 2004 (the first full year after implementation of the LTCH PPS). Under the reasonable cost-based payment system, there was little incentive for LTCHs to attempt to influence payments through changes in coding practices. Under the former reasonable cost-based payment system, a LTCH's payments were limited on the costs per discharge of its patients in a base year updated. Since payment was based on the resource use of a particular mix of patients in the base year, there may have been reluctance on the part of LTCHs, in subsequent years, to accept more resource-intensive patients than those patients they treat in their base year. In contrast, under the LTCH PPS, payment is DRG-based. Payments are dependent on the DRG to which a patient is assigned as determined by the patient's diagnosis. Therefore, a LTCH could treat higher severity patients with the expectation that payment will be determined based on the hospital case mix in the current year and without the concern, under the former payment system, that its costs for those more resource intensive patients would be limited by the cost per discharge limits

that were established by its patient mix in its base year. Immediately following the transition to the LTCH PPS, a LTCH could receive payment for treating patients with higher severity that require more intensive resources, which would have caused the LTCH to exceed its set limit under the TEFRA system. Therefore, we expected that in the first full year following implementation of the LTCH PPS, LTCHs would take advantage of this change and treat more severe patients. Accordingly, we believe that it is reasonable to assume that the real CMI increase in that first full year after implementation of the LTCH PPS would be somewhat higher than the 1.0 to 1.4 percent annual increase.

Thus, in the CMI analysis conducted for RY 2007 based on case mix data from FY 2003 to FY 2004, we used 2.75 percent as the proxy for the real CMI increase component of the total 6.75 percent observed CMI increase. (For a more detailed discussion on the 2.75 percent proxy for real CMI increase, refer to the RY 2007 LTCH PPS final rule (71 FR 27819 through 27827).)

Consequently for RY 2007, by removing the real CMI increase component (2.75 percent) from the observed CMI increase (6.75 percent), the apparent CMI increase from FY 2003 to FY 2004 was estimated to be 4.0 percent (6.75 − 2.75 = 4.0). The rate for RY 2007 was offset by 3.4 percent to account for the changes in coding practices that do not reflect increased severity of LTCH patients (which accounts for the fact that we have already included a 0.34 percent behavioral offset in establishing the initial LTCH PPS Federal rate). For further information on the update to the Federal rate for RY 2007, see the RY 2007 final rule (71 FR 27819 through 27827).

For this proposed rule, the CMI analysis performed in determining the proposed Federal rate update for RY 2008 is based on the observed CMI increase from FY 2004 to FY 2005 (the first and second full years of the LTCH PPS, respectively). We believe that as the LTCH PPS matured and LTCHs have become more familiar with the DRG-based payment system, it is more appropriate to utilize the estimate of real case-mix increase (1.0 percent to 1.4 percent) based on the RAND study that is typically found in acute care hospitals under the IPPS. Furthermore, an analysis of the most recent available LTCH claims data shows a steady decrease in the observed CMI from year to year since FY 2003 (the observed CMI change between FY 2003 and FY 2004 is 6.75 percent, between FY 2004 and FY 2005 is 3.49 percent, and between FY 2005 and FY 2006 is estimated to be 1.9 percent), which suggests that both apparent and real components of CMI are decreasing as the LTCH PPS matures. Given the estimated 1.9 percent observed CMI increase for FY 2006, it appears that it is inappropriate to assume a constant annual real case mix of 2.75 percent.

Therefore, for periods beyond the first full year of the LTCH PPS, we believe it is no longer appropriate to use such a generous estimate of real CMI. (Many LTCHs have cost reporting periods beginning in August and thus were not paid under the LTCH PPS until August 2003. For those hospitals, the first full year of the LTCH PPS was during FY 2004.) While the well-established ''real'' case-mix parameters based on the RAND study are based on IPPS data, we believe they are appropriate to apply under the LTCH PPS for the reasons explained below in this section. However, we are soliciting comments on other data sources that could be used to determine a proxy for real LTCH PPS case-mix change other than the 1.0 to 1.4 percent per year case-mix parameters based on the RAND study. As we have discussed numerous times in previous LTCH PPS proposed and final rules, acute care hospitals paid under the IPPS and LTCHs paid under the LTCH PPS have much in common. Hospitals paid under both systems are required to meet the same certification criteria set forth in section 1861(e) of the Act to participate as a hospital in the Medicare program. LTCHs are certified as acute care hospitals but are classified as LTCHs for payment purposes solely because such hospitals generally have an inpatient ALOS of greater than 25 days (as set forth in section 1886(d)(1)(B)(iv)(I) of the Act). Furthermore, the LTCH PPS uses the same patient classification system that is used under the IPPS, and several LTCH PPS payment policies, such as the area wage adjustment (§ 412.525(c)), COLA for Alaska and Hawaii (§ 412.525(b)), and high cost outlier (HCO) policy (§ 412.525(a)) are modeled after the similar IPPS policies.

Therefore, we believe it is appropriate to propose utilizing the estimate of real CMI increase based on the RAND study of 1.0 percent as the proxy for the portion of the observed 3.49 percent CMI increase from FY 2004 to FY 2005 that represents real CMI changes for use in determining the proposed RY 2008 Federal rate update. We propose to use the more conservative 1.0 percent (rather than the 1.4 percent) as a proxy for real CMI increase because it is consistent with what is used under the IPPS and we believe the similarities between LTCHs and acute care hospitals are significant as we explained previously. (For a more detailed discussion on the 1.0 percent for real CMI increase utilized in the IPPS, see the FY 2007 IPPS final rule (71 FR 48156 through 48158), and the FY 1994 IPPS proposed rule (58 FR 30444).) Accordingly, since the observed CMI change for FY 2005 is estimated at 3.49 percent (based on the most recent available LTCH case-mix data from FY 2004 compared to FY 2005), accounting for the real CMI change of 1.0 percent, we believe that 2.49 percent (3.49 − 1.0 = 2.49) of that increase reflects CMI increase that is due to changes in coding practices (rather than patient severity).

As we discussed in greater detail in the RY 2007 LTCH PPS final rule (71 FR 27819 through 27827), while we continue to believe that an update to the LTCH PPS Federal rate year should be based on the most recent estimate of the LTCH PPS market basket, we believe it appropriate that the rate be offset by an adjustment to account for changes in coding practices that do not reflect increased patient severity. Such an adjustment protects the integrity of the Medicare Trust Funds by ensuring that the LTCH PPS payment rates better reflect the true costs of treating LTCH patients (71 FR 27798 through 27820). Therefore, in determining the proposed RY 2008 update to the LTCH PPS Federal rate, we believe it is appropriate to apply an adjustment to eliminate the effect of coding or classification changes in a prior period (FY 2005) that do not reflect real changes in LTCHs' case-mix. Specifically, the proposed case-mix adjustment in determining the proposed RY 2008 Federal rate is meant to reduce current payments to account for the increase in payments in FY 2005 that resulted from the CMI increase that was attributable to the apparent case-mix increase in that year. As was the case when we determined the RY 2007 update factor, this adjustment would be necessary to account for payments that were made based on improved coding (rather than increased patient severity) in prior years. Therefore, in this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA to include appropriate adjustments, including updates, in the establishment of the LTCH PPS, we are proposing to revise § 412.523(c)(3), to specify that, for discharges occurring on or after July 1, 2007 and on or before June 30, 2008, the standard Federal rate from the previous year would be updated by 0.71 percent, which is based on the most recent market basket estimate (3.2 percent)

adjusted by the apparent CMI (2.49 percent) due to changes in coding practice rather than an increase in patient severity. As explained above in this section, the proposed update factor for RY 2008 is based on the most recent estimate of the LTCH PPS market basket offset by an adjustment to account for changes in case-mix in prior periods due to changes in coding practices rather than increased patient severity. We note that the proposed update factor of 0.71 percent is higher than the zero percent update recommended by the MedPAC for RY 2008 (MedPAC Public Meeting, January 9, 2007, Meeting Transcript pp. 225–226). We are soliciting comments on a possible zero percent update to the standard Federal rate for RY 2008.

Furthermore, since we are proposing to use the most recent estimates of the market basket and CMI increase in the prior period (FY 2005) for calculating the update factor to the LTCH PPS Federal rate, we note that at the time the analysis must be performed for the final rule, we will consider comments received on this proposed rule and would also use the most recent estimates available at that time, if appropriate, which may be different from the data we are using in this proposed rule. Therefore, the proposed update factor applied to the standard Federal rate may change in the final rule. Consequently, the update factor in the regulation text would change accordingly.

At this time, the most recent estimate of the LTCH PPS market basket is 3.2 percent, and the most recent estimate of apparent CMI increase in the prior period (FY 2005), that is, case-mix increase due to changes in coding practices, is 2.49 percent. Therefore, we are proposing that the RY 2008 update factor to the LTCH PPS Federal rate would be an estimated 0.71 percent (3.2 − 2.49 = 0.71), which reflects the proposed adjustment to the most recent market basket estimate and accounts for the increase in case-mix in the prior period that resulted from changes in coding practices rather than an increase in patient severity. Accordingly, under the same broad authority conferred upon the Secretary under the BBRA and the BIPA referenced above in this section, we are proposing to specify under § 412.523(c)(3)(iv), that, for discharges occurring on or after July 1, 2007 and on or before June 30, 2008, the standard Federal rate from the previous year would be updated by 0.71 percent, determined based on an adjustment to the most recent estimate of the market basket to account for case-mix increase in the prior period (FY 2005) that is due to changes in coding practices rather than patient severity.

3. Proposed Standard Federal Rate for the 2008 LTCH PPS Rate Year

In the RY 2007 LTCH PPS final rule (71 FR 27827), we established a standard Federal rate of $38,086.04 for the 2007 LTCH PPS rate year that was based on the best available data and policies established in that final rule. In this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, we are proposing an annual update to the standard Federal rate for RY 2008 that reflects an adjustment for the most recent market basket estimate and an adjustment to account for the increase in case-mix in a prior period (FY 2005) that resulted from changes in coding practices rather than an increase in patient severity. Therefore, based on the proposed update factor for RY 2008 of 0.71 percent, the proposed standard Federal rate for RY 2008 would be $38,356.45. Since the proposed standard Federal rate for the 2008 LTCH PPS rate year has already been adjusted for differences in case-mix, wages, COLAs, and HCO payments, we are not proposing to make any additional adjustments in the proposed standard Federal rate for these factors. Finally, we propose that if more recent data becomes available, we would use that data, if appropriate, to determine the update to the standard Federal rate for the RY 2008 final rule.

D. Calculation of Proposed LTCH Prospective Payments for the 2008 LTCH PPS Rate Year

The basic methodology for determining prospective payment rates for LTCH inpatient operating and capital-related costs is set forth in § 412.515 through § 412.532. In accordance with § 412.515, we assign appropriate weighting factors to each LTC–DRG to reflect the estimated relative cost of hospital resources used for discharges within that group as compared to discharges classified within other groups. The amount of the prospective payment is based on the standard Federal rate, established under § 412.523, and adjusted for the LTC–DRG relative weights, differences in area wage levels, COLA in Alaska and Hawaii, HCOs, and other special payment provisions (SSOs under § 412.529 and interrupted stays under § 412.531).

In accordance with § 412.533, during the 5-year transition period, which is currently in its final year for LTCH cost reporting periods beginning on or after October 1, 2006 (FY 2007), a total LTCH PPS payment was based on the applicable transition blend percentage of the adjusted Federal rate and a percentage based on reasonable cost principles unless the LTCH made a one-time election to receive payment based on 100 percent of the Federal rate. In the final year of the 5-year transition period, which begins with LTCH cost reporting periods beginning on or after October 1, 2006, as specified at § 412.533, a total LTCH PPS payment is based on 100 percent of the Federal rate. A LTCH defined as ''new'' under § 412.23(e)(4) is paid based on 100 percent of the Federal rate with no blended transition payments as specified in § 412.533(d). As discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56038), the applicable transition blends are set forth in § 412.533(a).

Accordingly, for cost reporting periods that began during FY 2006 (that is, on or after October 1, 2005 and on or before September 30, 2006), blended payments under the transition methodology are based on 20 percent of the LTCH's rate based on reasonable cost principles and 80 percent of the adjusted LTCH PPS Federal rate. For cost reporting periods beginning on or after October 1, 2006 (FY 2007), Medicare payment to LTCHs are determined entirely (100 percent) under the LTCH PPS Federal rate.

1. Proposed Adjustment for Area Wage Levels

a. Background

Under the authority of section 123 of the BBRA as amended by section 307(b) of the BIPA, we established an adjustment to the LTCH PPS Federal rate to account for differences in LTCH area wage levels at § 412.525(c). The labor-related share of the LTCH PPS Federal rate, currently estimated by the FY 2002-based RPL market basket (as discussed in greater detail in section IV.D.1.c. of this preamble), is adjusted to account for geographic differences in area wage levels by applying the applicable LTCH PPS wage index. The applicable LTCH PPS wage index is computed using wage data from inpatient acute care hospitals without regard to reclassification under sections 1886(d)(8) or 1886(d)(10) of the Act. Furthermore, as we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56015), we established a 5-year transition to the full wage adjustment. The applicable wage index phase-in percentages are based on the start of a LTCH's cost reporting period as shown in Table 1.

TABLE 1

Cost reporting periods beginning on or after	Phase-in percentage of the full wage index
October 1, 2002	1/5 (20 percent).
October 1, 2003	2/5 (40 percent).
October 1, 2004	3/5 (60 percent).
October 1, 2005	4/5 (80 percent).
October 1, 2006	5/5 (100 percent).

For example, for cost reporting periods beginning on or after October 1, 2005 and on or before September 30, 2006 (FY 2006), the applicable LTCH wage index value is four-fifths of the applicable full LTCH PPS wage index value. The wage index adjustment will be completely phased-in beginning with cost reporting periods beginning in FY 2007, that is, for cost reporting periods beginning on or after October 1, 2006, the applicable LTCH wage index value will be the full (five-fifths) LTCH PPS wage index value. Therefore, the majority of LTCHs are currently receiving either the four-fifths or full (five-fifths) LTCH PPS wage index value. As we established in the August 30, 2002 LTCH PPS final rule (67 FR 56018), the applicable full LTCH PPS wage index value is calculated from acute-care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act.

b. Geographic Classifications/Labor Market Area Definitions

As discussed in the August 30, 2002 LTCH PPS final rule, which implemented the LTCH PPS (67 FR 56015 through 56019), in establishing an adjustment for area wage levels under § 412.525(c), the labor-related portion of a LTCH's Federal prospective payment is adjusted by using an appropriate wage index based on the labor market area in which the LTCH is located. In the 2006 LTCH PPS rate year final rule (70 FR 24184 through 24185), in § 412.525(c), we revised the labor market area definitions used under the LTCH PPS effective for discharges occurring on or after July 1, 2005 based on the Office of Management and Budget's (OMB's) Core Based Statistical Area (CBSA) designations based on 2000 Census data because we believe that those new labor market area definitions will ensure that the LTCH PPS wage index adjustment most appropriately accounts for and reflects the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. As set forth in § 412.525(c)(2), a LTCH's wage index is determined based on the location of the LTCH in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C). An urban area under the LTCH PPS is defined at § 412.64(b)(1)(ii)(A) and (B). In general, an urban area is defined as a Metropolitan Statistical Area (MSA) as defined by the OMB. (In addition, a few counties located outside of MSAs are considered urban as specified at § 412.64(b)(1)(ii)(B).) Under § 412.64(b)(1)(ii)(C), a rural area is defined as any area outside of an urban area.

We note that these are the same CBSA-based designations implemented for acute care inpatient hospitals under the IPPS at § 412.64(b) effective October 1, 2004 (69 FR 49026 through 49034). For further discussion of the labor market area (geographic classification) definitions used under the LTCH PPS, see the 2006 LTCH PPS rate year final rule (70 FR 24182 through 24191).

c. Proposed Labor-Related Share

In the August 30, 2002 LTCH PPS final rule (67 FR 56016), we established a labor-related share of 72.885 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, postal services, and all other labor-intensive services) and capital costs of the excluded hospital with capital market basket based on FY 1992 data.

As we discussed in LTCH PPS final rules subsequent to the FY 2003 LTCH PPS final rule in which we established the original LTCH PPS labor-related share (68 FR 34142, 69 FR 25685 through 25686, and 70 FR 24182), once our research into the labor-related share methodology was complete, we would update the IPPS and excluded hospital labor-related shares based on that research and the best available data if necessary. Accordingly, we conducted analysis of our labor share methodology, which was completed prior to the development of the RY 2007 LTCH PPS proposed and final rules. In the RY 2007 LTCH PPS final rule (71 FR 27829), we updated the LTCH PPS labor-related share based on the FY 2002-based RPL market basket (discussed in section IV.B. of this preamble) because we believe that this market basket was developed based on the best available data that reflect the cost structures of LTCHs.

Consistent with our historical practice, the labor-related share currently used under the LTCH PPS is determined by identifying the national average proportion of operating costs and capital costs that are related to, influenced by, or vary with the local labor market. Specifically, in the RY 2007 LTCH PPS final rule (71 FR 27829 through 27832), we revised the LTCH PPS labor-related share from 72.885 percent (as established in the August 30, 2002 final rule (67 FR 56016) based on the FY 1997-based excluded hospital with capital market basket) to 75.665 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, and all other labor-intensive services) and capital costs of the proposed RPL market basket based on FY 2002 data from the first quarter of 2006.

As discussed in section IV.B.2. of this preamble, we now have data from the 3rd quarter of 2006 (with history through the 2nd quarter of 2006) available for determining the labor-related share of the FY 2002-based RPL market basket. Based on this more recent data, in this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, consistent with our historical practice of determining the labor-related share by identifying the national average proportion of operating costs and capital costs that are related to, influenced by, or varies with the local labor market, we are proposing to revise the LTCH PPS labor-related share from 75.665 percent to 75.511 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, and all other labor-intensive services) and capital costs of the FY 2002-based RPL market basket from the third quarter of 2006, as shown in Table 2. The labor-related share is the sum of the relative importance of wages and salaries, fringe benefits, professional fees, labor-intensive services, and a portion of the capital share from an appropriate market basket. In this proposed rule, for RY 2008, we are proposing to use the FY 2002-based RPL market basket costs based on data from the 3rd quarter of 2006 to determine the labor-related share for the LTCH PPS effective for discharges occurring on or after July 1, 2007, as this is the most recent available data. The labor-related share for the 2008 LTCH PPS rate year would continue to be the sum of the relative importance of each labor-related cost category, and would reflect the different rates of price change for these cost categories between the base year (FY 2002) and the 2008 LTCH PPS rate year. Consistent with our historical practice of using the best data available, if more recent data are available to determine the labor-related share of the RPL market basket (used under the

LTCH PPS), we propose to use it for determining the labor-related share for the 2008 LTCH PPS rate year in the final rule.

Based on the most recent available data, we are proposing that the sum of the relative importance for 2008 LTCH PPS rate year for operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) would be 71.484, as shown in Table 2. The portion of capital that is influenced by the local labor market is still estimated to be 46 percent, which is the same percentage used when we established the current labor-related share in the RY 2007 LTCH PPS final rule. Since, based on the most recent available data, the relative importance for capital would be 8.754 percent of the FY 2002-based RPL market basket for the 2008 LTCH PPS rate year, we are proposing to multiply the estimated portion of capital influenced by the local labor market (46 percent) by the relative importance for capital (8.754 percent) to determine the proposed labor-related share of capital for the 2008 LTCH PPS rate year. The result would be 4.027 percent (0.46 × 8.754 percent), which we would add to the proposed 71.484 percent for the operating cost amount to determine the proposed total labor-related share for the 2008 LTCH PPS rate year. Thus, based on the latest available data, we are proposing to use a labor-related share of 75.511 percent (71.484 percent + 4.027 percent) under the LTCH PPS for the 2008 LTCH PPS rate year. As noted above in this section, this proposed labor-related share is determined using the same methodology as employed in calculating the current LTCH labor-related share (71 FR 27830) and the labor-related shares used under the IRF PPS and IPF PPS, which also use the RPL market basket.

Table 2 shows the 2007 LTCH PPS rate year relative importance labor-related share of the FY 2002-based RPL market basket (established in the RY 2007 LTCH PPS final rule) and the proposed 2008 LTCH PPS rate year relative importance labor-related share of the FY 2002-based RPL market basket.

TABLE 2.—RY 2007 LABOR-RELATED SHARE RELATIVE IMPORTANCE AND PROPOSED RY 2008 LABOR-RELATED SHARE RELATIVE IMPORTANCE OF THE FY 2002-BASED RPL MARKET BASKET

Cost category	RY 2007 relative importance *	Proposed RY 2008 relative importance
Wages and Salaries	52.506	52.359
Employee Benefits	14.042	14.095
Professional fees	2.886	2.899
All other labor intensive services	2.152	2.131
Subtotal	71.586	71.484
Labor share of capital costs	4.079	4.027
Total Labor-related share	75.665	75.511

* As established in the RY 2007 LTCH PPS final rule (71 FR 27830).
** Other labor intensive services includes landscaping services, services to buildings, detective and protective services, repair services, laundry services, advertising, auto parking and repairs, physical fitness facilities, and other government enterprises.

d. Proposed Wage Index Data

In the RY 2007 LTCH PPS final rule (71 FR 27830 through 27831), we established LTCH PPS wage index values for the 2007 LTCH PPS rate year calculated from the same data (generated in cost reporting periods beginning during FY 2002) used to compute the FY 2006 acute care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act because that was the best available data at that time. The LTCH wage index values applicable for discharges occurring on or after July 1, 2006 through June 30, 2007 are shown in Table 1 (for urban areas) and Table 2 (for rural areas) in the Addendum to the RY 2007 LTCH PPS final rule (71 FR 27906 through 27930). Acute care hospital inpatient wage index data are also used to establish the wage index adjustment used in the IRF PPS, HHA PPS, and SNF PPS. As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56019), since hospitals that are excluded from the IPPS are not required to provide wage-related information on the Medicare cost report and because we would need to establish instructions for the collection of this LTCH data to establish a geographic reclassification adjustment under the LTCH PPS, the wage adjustment established under the LTCH PPS is based on a LTCH's actual location without regard to the urban or rural designation of any related or affiliated provider.

In this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, we are proposing that, for the 2008 LTCH PPS rate year, the same data (generated in cost reporting periods beginning during FY 2003) used to compute the FY 2007 acute care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act would be used to determine the applicable wage index values under the LTCH PPS because these data (FY 2003) are the most recent complete data. We are proposing to continue to use IPPS wage data as a proxy to determine the proposed LTCH wage index values for the 2008 LTCH PPS rate year because both LTCHs and acute-care hospitals are required to meet the same certification criteria set forth in section 1861(e) of the Act to participate as a hospital in the Medicare program and they both compete in the same labor markets, and, therefore, experience similar wage-related costs. These data are the same FY 2003 acute care hospital inpatient wage data that were used to compute the FY 2007 wage indices currently used under the IPPS, skilled nursing facility (SNF) PPS and home health agency (HHA) PPS. The proposed LTCH wage index values that would be applicable for discharges occurring on or after July 1, 2007 through June 30, 2008, are shown in Table 1 (for urban areas) and Table 2 (for rural areas) in Addendum A to this proposed rule.

As discussed in section IV.D.1.a. of this preamble, the applicable wage index phase-in percentages are based on the start of a LTCH's cost reporting

period beginning on or after October 1st of each year during the 5-year transition period. Thus, cost reporting periods beginning on or after October 1, 2005 and before October 1, 2006 (FY 2006), the labor-related portion of the standard Federal rate is adjusted by four-fifths of the applicable LTCH wage index value. The wage index adjustment will be completely phased-in beginning with cost reporting periods beginning in FY 2007. That is, for cost reporting periods beginning on or after October 1, 2006, the labor-related portion of the standard Federal rate is adjusted by the full (five-fifths) applicable LTCH wage index value.

Because the phase-in of the wage index does not coincide with the LTCH PPS rate year (July 1st through June 30th), most LTCHs will experience a change in the wage index phase-in percentages during the LTCH PPS rate year. For example, during the 2008 LTCH PPS rate year, for a LTCH with a September 1st fiscal year, the four-fifths wage index will be applicable for the first 2 months of the 2007 LTCH PPS rate year (July 1, 2007 through August 31, 2007) and the full (five-fifths) wage index will be applicable for the next 10 months of the 2008 LTCH PPS rate year (September 1, 2007 through June 30, 2008). For the remainder of such a LTCH's FY 2006 cost reporting periods, which coincides with the first 2 months of RY 2008, the applicable wage index value would be four-fifths of the full FY 2007 acute-care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act (as shown in Tables 1 and 2 in Addendum A to this proposed rule). Beginning with this LTCH's FY 2007 cost reporting period that will begin during RY 2008, the applicable wage index value would be the full (five-fifths) FY 2007 acute care hospital inpatient wage index data, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act (as shown in Tables 1 and 2 in Addendum A to this proposed rule). We note that since there are no longer any LTCHs in their cost reporting periods that began during FY 2003 through FY 2005 (the first three years of the 5-year wage index phase-in), we are no longer showing the 1/5th, 2/5ths and 3/5ths wage index values in Tables 1 and 2 in Addendum A to this proposed rule.

2. Proposed Adjustment for Cost-of-Living in Alaska and Hawaii

In the August 30, 2002 final rule (67 FR 56022), we established, under § 412.525(b), a COLA for LTCHs located in Alaska and Hawaii to account for the higher costs incurred in those States. In the RY 2007 LTCH PPS final rule (71 FR 27832), for the 2007 LTCH PPS rate year, we established a COLA to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in Table 8 of that same final rule.

Similarly, in this proposed rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, for the 2008 LTCH PPS rate year we are proposing a COLA to payments to LTCHs located in Alaska and Hawaii by multiplying the proposed standard Federal payment rate by the proposed factors listed in Table 3 because these are currently the most recent available data. These proposed factors are obtained from the U.S. Office of Personnel Management (OPM) and are currently used under the IPPS. In addition, we propose that if OPM releases revised COLA factors before March 1, 2007, we would use them for the development of the payments for the 2008 LTCH rate year and publish them in the LTCH PPS final rule.

TABLE 3.—PROPOSED COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS FOR THE 2008 LTCH PPS RATE YEAR

Alaska:	
All areas	1.25
Hawaii:	
Honolulu County	1.25
Hawaii County	1.165
Kauai County	1.2325
Maui County	1.2375
Kalawao County	1.2375

3. Proposed Adjustment for High-Cost Outliers (HCOs)

a. Background

Under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA, in the regulations at § 412.525(a), we established an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the LTCH PPS in determining resource costs at the patient and hospital level. These additional payments reduce the financial losses that would otherwise be incurred when treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients. We set the outlier threshold before the beginning of the applicable rate year so that total estimated outlier payments are projected to equal 8 percent of total estimated payments under the LTCH PPS. Outlier payments under the LTCH PPS are determined consistent with the IPPS outlier policy.

Under § 412.525(a), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted LTCH PPS payment for the LTC–DRG plus a fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital will incur under the outlier policy for a case with unusually high costs. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. Under the LTCH PPS HCO policy, the LTCH's loss is limited to the fixed-loss amount and a fixed percentage of costs above the outlier threshold (LTCH DRG payment plus the fixed loss amount) determined by the marginal cost factor. We calculate the estimated cost of a case by multiplying the overall hospital cost-to-charge ratio (CCR) by the Medicare allowable covered charge. In accordance with § 412.525(a)(3), we pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount).

Under the LTCH PPS, we determine a fixed-loss amount, that is, the maximum loss that a LTCH can incur under the LTCH PPS for a case with unusually high costs before the LTCH will receive any additional payments. We calculate the fixed-loss amount by estimating aggregate payments with and without an outlier policy. The fixed-loss amount will result in estimated total outlier payments being projected to be equal to 8 percent of projected total LTCH PPS payments. Currently, MedPAR claims data and CCRs based on data from the most recent provider specific file (PSF) (or to the applicable Statewide average CCR if a LTCH's CCR data are faulty or unavailable) are used to establish a fixed-loss threshold amount under the LTCH PPS.

b. Cost-to-Charge Ratios (CCRs)

In determining outlier payments, we calculate the estimated cost of the case by multiplying the LTCH's overall CCR by the Medicare allowable charges for the case. As we discussed in greater detail in the June 9, 2003 IPPS HCO final rule (68 FR 34506 through 34516), because the LTCH PPS HCO policy at § 412.525 is modeled after the IPPS

outlier policy, we believed that it and the SSO policy at § 412.529 are susceptible to the same payment vulnerabilities that became evident under the IPPS and, therefore, merited revision. Thus, we revised the HCO policy at § 412.525(a) and the SSO policy at § 412.529 in that same final rule for the determination of LTCHs' CCRs and the reconciliation of outlier payments.

Under the LTCH PPS, a single prospective payment per discharge is made for both inpatient operating and capital-related costs, and, therefore, we compute a single ''overall'' or ''total'' CCR for LTCHs based on the sum of their operating and capital costs (as described in Chapter 3, section 150.24, of the Medicare Claims Processing Manual (CMS Pub. 100–4)) as compared to total charges. Specifically, a LTCH's CCR is calculated by dividing a LTCH's total Medicare costs (that is, the sum of its operating and capital inpatient routine and ancillary costs) by its total Medicare charges (that is, the sum of its operating and capital inpatient routine and ancillary charges). (Instructions regarding the changes established in the June 9, 2003 IPPS HCO final rule for both LTCHs and IPPS hospitals can be found in Transmittal A–03–058 (Change Request 2785; July 3, 2003).)

As a result of the changes established in the June 9, 2003 IPPS HCO final rule, as we discussed in the RY 2007 LTCH PPS final rule (71 FR 27832 through 27833) and the FY 2007 IPPS final rule (71 FR 48119 through 48121), a LTCH is assigned the applicable Statewide average CCR if, among other things, a LTCH's CCR is found to be in excess of the applicable maximum CCR threshold (that is, the LTCH CCR ceiling). As we explained in the FY 2007 IPPS final rule (71 FR 48117), CCRs above this threshold are most likely due to faulty data reporting or entry, and, therefore, these CCRs should not be used to identify and make payments for outlier cases. Such data are clearly errors and should not be relied upon. Thus, under our established policy, if a LTCH's CCR is above the applicable ceiling, the applicable LTCH PPS Statewide average CCR is assigned to the LTCH instead of the CCR computed from its most recent (settled or tentatively settled) cost report data.

Under § 412.525(a)(4)(ii), for discharges occurring on or after August 8, 2003, and before October 1, 2006, we determined the applicable LTCH PPS Statewide average CCRs using the ''combined'' IPPS operating and capital Statewide average CCRs (that is, adding the separate IPPS operating and capital CCRs together to determine the LTCH PPS Statewide average CCRs).

Also, under § 412.525(a)(4)(ii), for discharges occurring on or after August 8, 2003, and before October 1, 2006, if a LTCH's CCR is above the applicable ''combined'' IPPS operating and capital ceiling (that is, adding the separate IPPS operating and capital CCR ceiling together), the applicable Statewide average CCR may be assigned to the LTCH.

As we explained in the FY 2007 IPPS final rule (71 FR 48117 through 48121), we revised our methodology for determining the annual CCR ceiling and Statewide average CCRs under the LTCH PPS because we believe that those changes are consistent with the LTCH PPS single payment rate for inpatient operating and capital costs. Therefore, under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, in that same final rule, we revised our methodology used to determine the LTCH CCR ceiling. For discharges occurring on or after October 1, 2006, we established that the LTCH CCR ceiling specified under § 412.525(a)(4)(iv)(C)(*2*) is calculated as three standard deviations above the corresponding national geometric mean total CCR (established and published annually by CMS). (The FI may use a Statewide average CCR if, among other things, a LTCH's CCR is in excess of the LTCH CCR ceiling.) The LTCH total CCR ceiling is determined based on IPPS CCR data, by first calculating the ''total'' (that is, operating and capital) IPPS CCR for each hospital and then determining the average ''total'' IPPS CCR for all IPPS hospitals. (Our rationale for using IPPS hospital data is discussed in the FY 2007 IPPS final rule (71 FR 48117) and reiterated below in this section.) The LTCH CCR ceiling is then established at 3 standard deviations from the corresponding national geometric mean total CCR. (For further detail on our methodology for annually determining the LTCH CCR ceiling, refer to the FY 2007 IPPS final rule (71 FR 48117 through 48119).) We also established that the LTCH ''total'' CCR ceiling used under the LTCH PPS will continue to be published annually in the IPPS proposed and final rules, and the public should continue to consult the annual IPPS proposed and final rules for changes to the LTCH total CCR ceiling that would be effective for discharges occurring on or after October 1 each year. Accordingly, in the FY 2007 IPPS final rule (71 FR 48119), we established a FY 2007 LTCH PPS total CCR ceiling of 1.321, effective for discharges occurring on or after October 1, 2006.

In addition, under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, we revised our methodology to determine the Statewide average CCRs under § 412.525(a)(4)(iv)(C) for use under the LTCH PPS in a manner similar to the way we compute the ''total'' CCR ceiling using IPPS CCR data (71 FR 48120). Specifically, under this revised methodology we first calculate the total (that is, operating and capital) CCR for each IPPS hospital. We then calculate the weighted average ''total'' CCR for all IPPS hospitals in the rural areas of the State and the weighted average ''total'' CCR for all IPPS hospitals in the urban areas of the State. (For further detail on our methodology for annually determining the LTCH urban and rural Statewide average CCRs, refer to the FY 2007 IPPS final rule (71 FR 48119 through 48121).) We also established that the applicable Statewide average ''total'' (operating and capital) CCRs used under the LTCH PPS will continue to be published annually in the IPPS proposed and final rules, and the public should continue to consult the annual IPPS proposed and final rules for changes to the applicable Statewide average total CCRs that would be effective for discharges occurring on or after October 1 each year. Accordingly, in the FY 2007 IPPS final rule (71 FR 48122), the FY 2007 LTCH PPS Statewide average total CCRs for urban and rural hospitals, effective for discharges occurring on or after October 1, 2006, were presented in Table 8C of the Addendum of that final rule (71 FR 48303).

As we explained in the FY 2007 IPPS final rule (71 FR 48117), we continue to believe it is appropriate to use IPPS operating and capital CCRs to compute the LTCH total CCR ceiling and the Statewide average CCRs because LTCHs' cost and charge structures are similar to that of IPPS acute-care hospitals. For instance, LTCHs are certified as acute care hospitals, as set forth in section 1861(e) of the Act to participate as a hospital in the Medicare program, and these hospitals, in general, are paid as LTCHs only because their Medicare ALOS is greater than 25 days as specified in § 412.23(e). Furthermore, prior to qualifying as a LTCH under § 412.23(e)(2)(i), a hospital generally is paid as an acute-care hospital under the IPPS during the period in which it demonstrates that it has an ALOS of greater than 25 days. In addition, since there are less than 400 LTCHs, which are unevenly geographically distributed throughout the United States, there may not be sufficient LTCH CCR data to

determine an appropriate LTCH PPS CCR ceiling using LTCH data.

In the FY 2007 IPPS final rule, in addition to revising our methodology for determining the annual CCR ceiling and Statewide average CCRs under the LTCH PPS for discharges occurring on or after October 1, 2006, under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, we revised § 412.525(a)(4)(iv) for discharges occurring on or after October 1, 2006, to codify in 42 CFR part 412, subpart O the remaining LTCH PPS outlier policy changes that were established in the June 9, 2003 IPPS HCO final rule (68 FR 34506 through 34513), including modifications and editorial clarifications to those existing policies established in that final rule. We made these revisions because we believe that they more precisely describe the application of those policies as they relate to the determination of LTCH CCRs because these changes are consistent with the changes to the calculation of the LTCH CCR ceiling.

Specifically, in the FY 2007 IPPS final rule (71 FR 48119), under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, we established under the LTCH PPS HCO policy at § 412.525(a)(4)(iv)(C) that the FI may use a Statewide average CCR, which is established annually by CMS, if it is unable to determine an accurate CCR for a LTCH in one of the following three circumstances: (1) New LTCHs that have not yet submitted their first Medicare cost report (for this purpose, consistent with current policy, a new LTCH would be defined as an entity that has not accepted assignment of an existing hospital's provider agreement in accordance with § 489.18); (2) LTCHs whose CCR is in excess of the LTCH CCR ceiling; and (3) other LTCHs for whom data with which to calculate a CCR are not available (for example, missing or faulty data). (Other sources of data that the FI may consider in determining a LTCH's CCR included data from a different cost reporting period for the LTCH, data from the cost reporting period preceding the period in which the hospital began to be paid as a LTCH (that is, the period of at least 6 months that it was paid as a short-term acute care hospital), or data from other comparable LTCHs, such as LTCHs in the same chain or in the same region.)

Additionally, in the FY 2007 IPPS final rule (71 FR 48121), we established under § 412.525(a)(4)(iv)(B) and § 412.529(c)(3)(iv)(B) that, for discharges occurring on or after October 1, 2006, the CCR applied at the time a claim is processed will be based on either the most recently settled cost report or the most recent tentatively settled cost report, whichever is from the latest cost reporting period. Under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, in that same final rule, we also established at § 412.525(a)(4)(iv)(A) that, for discharges occurring on or after October 1, 2006, we may specify an alternative to the CCR computed under § 412.525(a)(4)(iv)(B) (that is, computed from the most recently settled cost report or the most recent tentatively settled cost report, whichever is later), or a hospital may also request that the FI use a different (higher or lower) CCR based on substantial evidence presented by the hospital. In addition, under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, we revised § 412.525(a)(3) to change the plural reference from cost-to-charge ''ratios'' to the singular reference to a cost-to-charge ''ratio'' in that final rule. For a complete discussion on all these revisions to our methodology for determining a LTCH's CCR, refer to the FY 2007 IPPS final rule (71 FR 48119 through 48121). We note that in that same FY 2007 IPPS final rule, we made similar revisions to the SSO policy at § 412.529(c)(3), as discussed in V.A.1.b. of the preamble of this proposed rule.

c. Establishment of the Proposed Fixed-Loss Amount

When we implemented the LTCH PPS, as discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56022 through 56026), under the broad authority of section 123 of the BBRA as amended by section 307(b) of BIPA, we established a fixed-loss amount so that total estimated outlier payments are projected to equal 8 percent of total estimated payments under the LTCH PPS. To determine the fixed-loss amount, we estimate outlier payments and total LTCH PPS payments for each case using claims data from the MedPAR files. Specifically, to determine the outlier payment for each case, we estimate the cost of the case by multiplying the Medicare covered charges from the claim by the LTCH's hospital specific CCR. Under § 412.525(a)(3), if the estimated cost of the case exceeds the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount), we pay an outlier payment equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount).

In the RY 2007 LTCH PPS final rule (71 FR 27838), in calculating the fixed-loss amount that would result in estimated outlier payments projected to be equal to 8 percent of total estimated payments for the 2007 LTCH PPS rate year, we used claims data from the December 2005 update of the FY 2005 MedPAR files and CCRs from the December 2005 update of the PSF, as that was the best available data at that time. We believe that CCRs from the PSF are the best available CCR data for determining estimated LTCH PPS payments for a given LTCH PPS rate year because they are the most recently available CCRs actually used to make LTCH PPS payments.

As we also discussed in the RY 2007 LTCH PPS rate year final rule (71 FR 27838), we calculated a single fixed-loss amount for the 2007 LTCH PPS rate year based on the version 23.0 of the GROUPER, which was the version in effect as of the beginning of the LTCH PPS rate year (that is, July 1, 2006 for the 2007 LTCH PPS rate year). In addition, we applied the outlier policy under § 412.525(a) in determining the fixed-loss amount for the 2007 LTCH PPS rate year; that is, we assigned the applicable Statewide average CCR only to LTCHs whose CCRs exceeded the ceiling (and not when they fell below the floor). Accordingly, we used the FY 2006 LTCH PPS CCR ceiling of 1.423 (71 FR 27838). As noted in that same final rule, in determining the fixed-loss amount for the 2007 LTCH PPS rate year using the CCRs from the PSF, there were no LTCHs with missing CCRs or with CCRs in excess of the current ceiling and, therefore, there was no need for us to independently assign the applicable Statewide average CCR to any LTCHs in determining the fixed-loss amount for the 2007 LTCH PPS rate year (as this may have already been done by the FI in the PSF in accordance with the established policy).

Accordingly, in 2007 LTCH PPS rate year final rule (71 FR 27838), we established a fixed-loss amount of $14,887 for the 2007 LTCH PPS rate year. Thus, we pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH PPS payment for the LTC–DRG and the fixed-loss amount of $14,887).

In this proposed rule, for the 2008 LTCH PPS rate year, we used the March 2006 update of the FY 2005 MedPAR claims data to determine a proposed fixed-loss amount that would result in estimated outlier payments projected to be equal to 8 percent of total estimated payments, based on the policies described in this proposed rule, because these data are the most recent complete

LTCH data available. Consistent with our historical practice of using the best data available, if more recent LTCH claims data become available, we propose to use it for determining the fixed-loss amount for the 2008 LTCH PPS rate year in the final rule. Furthermore, as noted previously, we determined the proposed fixed-loss amount based on the version of the GROUPER that would be in effect as of the beginning of the 2008 LTCH PPS rate year (July 1, 2007), that is, Version 24.0 of the GROUPER (as established in the FY 2007 IPPS final rule (71 FR 47973)).

We also used CCRs from the June 2006 update of the PSF for determining the proposed fixed-loss amount for the 2008 LTCH PPS rate year as they are currently the most recent complete available data. Consistent with our historical practice of using the best data available, if more recent CCR data are available, we propose to use it for determining the fixed-loss amount for the 2008 LTCH PPS rate year in the final rule. As we discussed in this proposed rule, we revised our methodology for our annual determination of the applicable LTCH CCR ceiling and applicable Statewide average CCRs in determining a LTCH's CCR effective for discharges occurring on or after October 1, 2006 in the FY 2007 IPPS final rule (71 FR 48117 through 48122). Accordingly, in determining the proposed fixed-loss amount for the 2008 LTCH PPS rate year, we used the current FY 2007 applicable LTCH ''total'' CCR ceiling of 1.321 and LTCH Statewide average ''total'' CCRs established under our revised methodology in the FY 2007 IPPS final rule (71 FR 48118 and 48121) such that the current applicable Statewide average CCR would be assigned if, among other things, a LTCH's CCR exceeded the current ceiling (1.321). We note that in determining the proposed fixed-loss amount for the 2008 LTCH PPS rate year using the CCRs from the PSF, there was no need for us to independently assign the applicable Statewide average CCR to any LTCHs (as this may have already been done by the FI in the PSF in accordance with our established policy). (Currently, the applicable FY 2007 LTCH Statewide average CCRs can be found in Table 8C of the FY 2007 IPPS final rule (71 FR 48303).)

Accordingly, based on the data and policies described in this proposed rule, we are proposing a fixed-loss amount of $18,774 for the 2008 LTCH PPS rate year. Thus, we would pay an outlier case 80 percent of the difference between the estimated cost of the case and the proposed outlier threshold (the sum of the adjusted proposed Federal LTCH payment for the LTC–DRG and the proposed fixed-loss amount of $18,774). We note that the proposed fixed-loss amount for the 2008 LTCH PPS rate year is higher than the current fixed-loss amount of $14,887. In addition to being based on the most recent available LTCH data to estimate the cost of each LTCH case, this proposed change in the fixed-loss amount is primarily due to the projected decrease in estimated aggregate LTCH PPS payments that is expected to result from the approach discussed for the SSO policy under § 412.529 (discussed in greater detail in section V.A.2. of this preamble), in conjunction with the proposed changes to the area wage adjustment (discussed in greater detail in section IV.D.1. of this preamble) and the changes to the LTC–DRG relative weights for FY 2007 (as discussed in the FY 2007 IPPS final rule (71 FR 47971 through 47994)). We note that if the approach discussed for the SSO policy was not considered, then the proposed fixed-loss amount would be $18,207.

As discussed in greater detail in the impact analysis presented in section XVI.B.4. of this proposed rule, we are projecting that the proposed changes, including the approach discussed for the SSO policy presented in section V.A.2. of this proposed rule, would result in a 0.7 percent decrease in estimated payments per discharge in RY 2008 as compared to RY 2007, on average, for all LTCHs. While we are projecting that the proposed 0.71 percent update to the Federal rate (discussed in section IV.C. of this preamble) would result in an increase in estimated payments per discharge in RY 2008 as compared to RY 2007, this increase would be offset by the projected decrease in estimated payments per discharge from RY 2007 to RY 2008 of 0.9 percent due to the approach being considered for the SSO policy and a projected decrease in estimated payments per discharge from RY 2007 to RY 2008 of 0.5 percent due to the proposed changes to the area wage adjustment (including the progression of the established phase-in of that adjustment). Without taking the approach being considered for the SSO policy into account, the proposed changes to the payment rate and policies noted above would result in a 0.3 percent increase in estimated payments per discharge in RY 2008 as compared to RY 2007. Furthermore, as we discussed in the FY 2007 IPPS final rule (71 FR 48343 through 47994), the changes to the LTC–DRG relative weights for FY 2007, which we used to determine the proposed RY 2008 fixed-loss amount, were projected to result in a 1.3 percent decrease in estimated aggregate LTCH PPS payments in FY 2007.

Because of the estimated decrease in aggregate LTCH PPS payments proposed for the 2008 LTCH PPS rate year (as discussed above in this section), we believe that an increase in the proposed fixed-loss amount is appropriate and necessary to maintain the requirement that estimated outlier payments would be projected to be equal to 8 percent of estimated total LTCH PPS payments, as required under § 412.525(a). As we discussed in the RY 2007 final rule (71 FR 27836), maintaining the fixed-loss amount at the current level would result in HCO payments that significantly exceed the current regulatory requirement that estimated outlier payments would be projected to equal 8 percent of estimated total LTCH PPS payments. Based on the regression analysis that was performed when we implemented the LTCH PPS (August 30, 2002 final rule (67 FR 56022 through 56027)), we established the outlier target at 8 percent of estimated total LTCH PPS payments to allow us to achieve a balance between the ''conflicting considerations of the need to protect hospitals with costly cases, while maintaining incentives to improve overall efficiency'' (67 FR 56024). That regression analysis also showed that additional increments of outlier payments over 8 percent (that is, raising the outlier target to a larger percentage than 8 percent) would reduce financial risk, but by successively smaller amounts. Outlier payments are budget neutral, and therefore, outlier payments are funded by prospectively reducing the non-outlier PPS payment rates by projected total outlier payments. The higher the outlier target, the greater the (prospective) reduction to the base payment would need to be applied to the Federal rate to maintain BN.

As we discussed in the RY 2007 LTCH PPS final rule (71 FR 27834 through 27835) when we proposed to increase the fixed-loss amount for RY 2007 (over the RY 2006 fixed-loss amount), as an alternative to the proposal to raise the RY 2007 fixed-loss amount, we examined adjusting the marginal cost factor (that is, the percentage that Medicare will pay of the estimated cost of a case that exceeds the sum of the adjusted Federal prospective payment for the LTC–DRG and the fixed-loss amount for LTCH PPS outlier cases as specified in § 412.525(a)(3)), which is currently equal to 80 percent, as a means of ensuring that estimated outlier payments would be projected to

equal 8 percent of estimated total LTCH PPS payments. When we initially established the 80 percent marginal cost factor in the August 30, 2002 final rule (67 FR 56022 through 56027), we explained that our analysis of payment-to-cost ratios for HCO cases showed that a marginal cost factor of 80 percent appropriately addresses outlier cases that are significantly more expensive than nonoutlier cases, while simultaneously maintaining the integrity of the LTCH PPS.

In proposing an increase to the fixed-loss amount for RY 2007 (71 FR 27834), we also solicited comments on whether we should revisit the regression analysis discussed above in this section that was used to establish the existing 8 percent outlier target and 80 percent marginal cost factor, using the most recent available data to evaluate whether the current outlier target of 8 percent or the 80 percent marginal cost factor should be adjusted, and therefore, could have resulted in less of an increase in the fixed-loss amount for RY 2007. In response to this solicitation (as summarized in the RY 2007 LTCH PPS final rule (71 FR 27834 through 24835)), several commenters opposed any option that would allow us to revisit the regression analysis that was used to establish the existing 80 percent marginal cost factor and existing outlier target of 8 percent. The commenters stated their belief that the LTCH PPS is still in its early stages and further changes to the 80 percent marginal cost factor or 8 percent outlier target would result in instability to the system. The commenters cautioned against making any premature changes to the factors affecting HCO payments to LTCHs, particularly the marginal cost factor and outlier target established by regulation when the LTCH PPS was implemented. Also, the commenters agreed that keeping the marginal cost factor at 80 percent and the outlier pool at 8 percent better identifies LTCH patients that are truly unusually costly cases, and that this policy appropriately addresses outlier cases that are significantly more expensive than non-outlier cases.

In response to these comments, we agreed with the commenters that, based on the regression analysis done for the implementation of the LTCH PPS (August 30, 2002; 68 FR 56022 through 56026), a marginal cost factor of 80 percent and a outlier target of 8 percent best identifies LTCH patients that are truly unusually costly cases, and that such a policy appropriately addresses LTCH HCO cases that are significantly more expensive than non-outlier cases, which is consistent with our intent of the LTCH HCO policy as stated when we implemented the LTCH PPS in the August 30, 2002 final rule (67 FR 56025). Therefore, as supported by many commenters, in the RY 2007 LTCH PPS final rule (71 FR 27835), we did not revisit the regression analysis that was used to establish the existing 80 percent marginal cost factor and existing outlier target of 8 percent, and therefore, did not make any changes to the marginal cost factor or outlier target in that final rule. Furthermore, we stated that after revisiting this issue and an analysis of the most recent complete available data, due to the lag time in the availability of data, we now believe the most appropriate time to revisit a budget neutral policy change in the outlier policy (among other things), which would affect future LTCH PPS payment rates, would be after the conclusion of the 5-year transition period when we expect to have several years of data generated after the implementation of the LTCH PPS.

Although proposing to raise the fixed-loss amount from $14,887 to $18,774 (based on the policies presented in this proposed rule) would increase the amount of the ''loss'' that a LTCH must incur under the LTCH PPS for a case with unusually high costs before the LTCH would receive any additional Medicare payments, as we discussed above and as we explained in greater detail in the RY 2007 LTCH PPS final rule, based on the best available data, we continue to believe that the existing 8 percent outlier target and 80 percent marginal cost factor continue to adequately maintain the LTCHs' share of the financial risk in treating the most costly patients and ensure the efficient delivery of services. Accordingly, we are not proposing to adjust the existing 8 percent outlier target or 80 percent marginal cost factor under the LTCH PPS HCO policy at this time. However, we continue to be interested in any comments that would support revisiting the analysis that was used to establish the existing 8 percent outlier target and the existing 80 percent marginal cost factor, using the most recent available data to evaluate whether any changes to the current HCO policy should be made, and therefore, may result in less of an increase in the fixed-loss amount for RY 2008.

Furthermore, we note that the proposed fixed-loss amount of $18,774 is lower than the FY 2003 fixed-loss amount of $24,450 (67 FR 56023) and the 2004 LTCH PPS rate year fixed-loss amount of $19,590 (68 FR 34144), and only slightly higher than the 2005 LTCH PPS rate year fixed-loss amount of $17,864 (69 FR 25688), all of which were in effect during the time period that we estimate positive Medicare margins (as discussed in the RY 2007 LTCH PPS final rule (71 FR 27820 through 27825). Therefore, we believe the proposed fixed-loss amount of $18,774 would appropriately identify unusually costly LTCH cases while maintaining the integrity of the LTCH PPS. Thus, under the broad authority of section 123(a)(1) of the BBRA and section 307(b)(1) of BIPA, we are proposing to establish a fixed-loss amount of $18,774 based on the best available LTCH data and the policies presented in this proposed rule because we believe a proposed increase in the fixed-loss amount is appropriate and necessary to maintain estimated outlier payments are projected to be equal to 8 percent of estimated total LTCH PPS payments, as required under § 412.525(a).

d. Reconciliation of Outlier Payments Upon Cost Report Settlement

In the June 9, 2003 HCO final rule (68 FR 34508 through 34512), we established our policy for LTCHs that provided that effective for LTCH PPS discharges occurring on or after August 8, 2003, any reconciliation of outlier payments will be based upon the actual CCR computed from the costs and charges incurred in the period during which the discharge occurs. In that same final rule, we also established that, for discharges occurring on or after August 8, 2003, at the time of any reconciliation, outlier payments may be adjusted to account for the time value of any underpayments or overpayments based upon a widely available index to be established in advance by the Secretary and will be applied from the midpoint of the cost reporting period to the date of reconciliation. (Additional information on the administration of the reconciliation process under the IPPS is provided in CMS Program Transmittal 707 (October 12, 2005; Change Request 3966). We note that we are currently developing additional instructions on the administration of the reconciliation process under the LTCH PPS that would be similar to the IPPS reconciliation process.)

In the FY 2007 IPPS final rule (71 FR 48121 through 48122), for discharges occurring on or after October 1, 2006, we codified into the LTCH PPS section of the regulations (42 CFR part 412, subpart O) the provisions governing the determination of LTCHs' CCRs, including modifications and editorial clarifications to our existing methodology for determining the annual LTCH CCR ceiling and applicable Statewide average CCRs under the LTCH PPS. (We note that we also made

the same changes under the SSO policy at § 412.529(c)(3), as discussed in section V.A.1.c. of this preamble).

In the FY 2007 IPPS final rule (71 FR 48122), under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, we revised § 412.525(a)(4)(iv)(D) through (E), for discharges occurring on or after October 1, 2006, to codify in subpart O of 42 CFR part 412 the provisions discussed concerning the reconciliation of LTCH PPS outlier payments, including editorial clarifications discussed in greater detail in this section, that would more precisely describe the application of those policies. Specifically, at § 412.525(a)(4)(iv)(D), we specified that for discharges occurring on or after October 1, 2006, any reconciliation of outlier payments will be based on the CCR calculated based on a ratio of costs-to-charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled. In addition, at § 412.525(a)(4)(iv)(E), we specified that for discharges occurring on or after October 1, 2006, at the time of any reconciliation, outlier payments may be adjusted to account for the time value of any underpayments or overpayments. We also specified that such an adjustment will be based upon a widely available index to be established in advance by the Secretary and will be applied from the midpoint of the cost reporting period to the date of reconciliation. We made these additional revisions to § 412.525(a)(4) because we believe that these changes are more consistent with the LTCH PPS single payment rate for inpatient operating and capital costs (as discussed in greater detail previously), and because we believe it is more appropriate and administratively simpler to include all of the regulatory provisions concerning the determination of LTCH PPS outlier payments applicable under the LTCH PPS regulations in subpart O of 42 CFR part 412 of the CFR.

e. Application of Outlier Policy to Short-Stay Outlier (SSO) Cases

As we discussed in the August 30, 2002 final rule (67 FR 56026), under some rare circumstances, a LTCH discharge could qualify as a SSO case (as defined under § 412.529 and discussed in section V.A.1.a. of this preamble) and also as a HCO case. In this scenario, a patient could be hospitalized for less than five-sixths of the geometric ALOS for the specific LTC–DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the outlier threshold (that is, the SSO payment plus the fixed-loss amount), the discharge would be eligible for payment as a HCO. Thus, for a SSO case in the 2008 LTCH PPS rate year, the HCO payment would be 80 percent of the difference between the estimated cost of the case and the proposed outlier threshold (the sum of the proposed fixed-loss amount of $18,774 and the amount paid under the SSO policy).

4. Other Payment Adjustments

As indicated earlier, we have broad authority under section 123(a)(1) of the BBRA as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs. Thus, in the August 30, 2002 LTCH PPS final rule (67 FR 56014 through 56027), we discussed our extensive data analysis and rationale for not implementing an adjustment for geographic reclassification, rural location, treating a disproportionate share of low-income patients (DSH), or indirect medical education (IME) costs. In that same final rule, we stated that we would collect data and reevaluate the appropriateness of these adjustments in the future once more LTCH data become available after the LTCH PPS is implemented.

As we discussed in the RY 2007 LTCH PPS final rule (71 FR 27839), we now believe that after the completion of the 5-year transition, sufficient new data that will have been generated while LTCHs are subject to the LTCH PPS may be available for a comprehensive reevaluation of payment adjustments such as geographic reclassification, rural location, DSH, and IME. The end of the 5-year transition occurs with cost reporting periods beginning on or after October 1, 2007. Therefore, in this proposed rule, we are not proposing to make any adjustments for geographic reclassification, rural location, DSH, or IME. However, we will continue to collect and interpret new data as they become available in the future to determine if these data support proposing any additional payment adjustments. As we also discussed in the RY 2007 LTCH PPS final rule (71 FR 27839), we now believe that it is appropriate to wait for the conclusion of the 5-year transition to 100 percent of the Federal rate under the LTCH PPS, to maximize the availability of data that are reflective of LTCH behavior in response to the implementation of the LTCH PPS to be used to conduct a comprehensive evaluation of the potential payment adjustment policies (such as rural location, DSH and IME) in conjunction with our evaluation of the possibility of making a one-time prospective adjustment to the LTCH PPS rates provided for at § 412.523(d)(3).

5. Proposed Budget Neutrality (BN) Offset To Account for the Transition Methodology

Under § 412.533, we implemented a 5-year transition, during which a LTCH is paid a total LTCH PPS payment that is comprised of an increasing percentage of the LTCH PPS Federal prospective payment rate and a decreasing percentage of its payments based on the reasonable cost-based payment principles for each discharge. Furthermore, we allow a LTCH (other than those defined as ''new'' under § 412.23(e)(4)) to elect to be paid based on 100 percent of the standard Federal rate in lieu of the blended methodology.

The standard Federal rate was determined as if all LTCHs will be paid based on 100 percent of the standard Federal rate. As stated earlier, we provide for a 5-year transition period that allows LTCHs to receive LTCH PPS payments in which a component incorporates reasonable cost principles. To maintain BN for FY 2003 as required by section 123(a)(1) of the BBRA during the 5-year transition period, we reduce all LTCH Medicare payments (whether a LTCH elects payment based on 100 percent of the Federal rate or whether a LTCH is being paid under the transition blend methodology) to account for the cost of the applicable transition period methodology in a given LTCH PPS rate year.

Specifically, during the LTCH PPS rate years governed under the 5-year transition policy at § 412.533(a), we reduce all LTCH Medicare payments during the 5-year transition by a factor that is equal to 1 minus the ratio of the estimated TEFRA reasonable cost-based payments that would be made if the LTCH PPS was not implemented, to the projected total Medicare program PPS payments (that is, payments made under the transition methodology and the option to elect payment based on 100 percent of the Federal rate).

In the RY 2007 LTCH PPS final rule (71 FR 27841), based on the best available data at that time, we projected that approximately 98 percent of LTCHs will be paid based on 100 percent of the standard Federal rate rather than receive payment under the transition blend methodology for the 2006 LTCH PPS rate year. Using the same methodology described in the August 30, 2002 LTCH PPS final rule (67 FR 56034), this projection, which used updated data

and inflation factors, was based on our estimate that either: (1) A LTCH has already elected payment based on 100 percent of the Federal rate prior to the start of the 2007 LTCH PPS rate year (July 1, 2006); or (2) a LTCH would receive higher payments based on 100 percent of the 2007 LTCH PPS rate year standard Federal rate compared to the payments it would receive under the transition blend methodology. Similarly, we projected that the remaining 2 percent of LTCHs would choose to be paid based on the applicable transition blend methodology (as set forth under § 412.533(a)) because they would receive higher payments than if they were paid based on 100 percent of the 2007 LTCH PPS rate year standard Federal rate.

Also in the RY 2007 LTCH PPS final rule (71 FR 24202), based on the best available data at that time and policy revisions described in that same rule, we projected that in absence of a transition BN offset, the full effect of the final full year of the transition period (including the election option) as compared to payments as if all LTCHs would be paid based on 100 percent of the Federal rate would result in a negligible cost to the Medicare program (that is, less than $1 million in RY 2007). Because the $1 million in estimated costs to the Medicare program was such a small percentage of the estimated total LTCH payments for RY 2007 (over $5 billion), the formula that we use to establish the BN offset resulted in a factor, which we reduce all Medicare payments by to account for the additional costs of the transition methodology of zero (due to rounding). Therefore, we established a zero percent transition period BN offset to all LTCH PPS payments for discharge occurring on or after July 1, 2006 through June 30, 2007, to account for the estimated cost of the transition period methodology (including the option to elect payment based on 100 percent of the Federal rate) in RY 2007. Furthermore, in that same final rule (71 FR 27841), we explained that we are no longer projecting a small cost for the 2008 LTCH PPS rate year (July 1, 2007 through June 30, 2008) even though some LTCH's will have a cost reporting period for the 5th year of the transition period which will be concluding in the first 3 months of the 2008 LTCH PPS rate year. This is because, based on the most available data, we are projecting that the vast majority of LTCHs would have made the election to be paid based on 100 percent of the Federal rate rather than the transition blend which would result in a negligible cost to the Medicare program. In fact, based on the most recent available data from the July 2006 update of the PSF, we continue to estimate that nearly all (over 98 percent) LTCHs are currently being paid based on 100 percent of the Federal rate (rather than the transition blend methodology). Even for those few remaining LTCHs paid under the transition blend methodology set forth at § 412.533(a), the majority of their LTCH PPS payments are now based on at least 80 percent of the Federal rate and 20 percent of the reasonable cost amount (for cost reporting periods beginning during FY 2006) since there are no longer any LTCHs in their cost reporting periods that began during FY 2003 through FY 2005 (the first three years of the 5-year transition period). Therefore, we continue to believe that there would be no measurable estimated cost to the Medicare program due to the transition period methodology (including the option to elect payment based on 100 percent of the Federal rate) in RY 2008. Accordingly, in this proposed rule, based on updated data and using the same methodology established in the August 30, 2002 final rule (67 FR 56034), we are not proposing a transition BN offset to all LTCH PPS payments for discharges occurring on or after July 1, 2007 through June 30, 2008, to account for the estimated cost of the transition period methodology (including the option to elect payment based on 100 percent of the Federal rate, since some LTCHs may still be paid under the 4th year of the transition blend methodology, specified at § 412.533, for the first 3 months of RY 2008) in RY 2008.

6. One-Time Prospective Adjustment to the Standard Federal Rate

As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56036), consistent with the statutory requirement for BN in section 123(a)(1) of the BBRA, we estimated aggregate payments under the LTCH PPS for FY 2003 to be equal to the estimated aggregate payments that would be made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the BN calculations used the best available data at the time and necessarily reflected assumptions. As the LTCH PPS progresses, we are monitoring payment data and will evaluate the ultimate accuracy of the assumptions used in the BN calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS) described in the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56037). To the extent these assumptions significantly differ from actual experience, the aggregate amount of actual payments may turn out to be significantly higher or lower than the estimates on which the BN calculations were based.

Section 123(a)(1) of the BBRA as amended by section 307(b) of BIPA provides broad authority to the Secretary in developing the LTCH PPS, including the authority for establishing appropriate adjustments. Under this broad authority to make appropriate adjustments, as implemented in the existing § 412.523(d)(3) (as revised in the RY 2007 LTCH PPS final rule), we have provided for the possibility of making a one-time prospective adjustment to the LTCH PPS rates by July 1, 2008, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the LTCH PPS rates for future years. In the RY 2007 LTCH PPS final rule (71 FR 27842), based on the best available data at that time, we estimated that total Medicare program payments for LTCH services over the next 5 LTCH PPS rate years would be $5.27 billion for the 2007 LTCH PPS rate year; $5.43 billion for the 2008 LTCH PPS rate year; $5.63 billion for the 2009 LTCH PPS rate year; $5.86 billion for the 2010 LTCH PPS rate year; and $6.13 billion for the 2011 LTCH PPS rate year.

In this proposed rule, consistent with the methodology established in the August 30, 2002 final rule (67 FR 56036), based on the most recent available data, we estimate that total Medicare program payments for LTCH services for the next 5 LTCH PPS rate years would be as shown in Table 4.

TABLE 4

LTCH PPS rate year	Estimated payments ($ in billions)
2008	$4.65
2009	4.84
2010	5.02
2011	5.24
2012	5.48

In accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 56037), these estimates are based on the most recent available data, including the projection that nearly all LTCHs will be paid based on 100 percent of the LTCH PPS standard Federal rate during the majority of RY 2008 (in accordance with the transition blend percentages set

forth at § 412.533(a)). These estimates are also based on our estimate of LTCH PPS rate year payments to LTCHs using CMS' Office of the Actuary's (OACT) most recent estimate of the RPL market basket of 3.2 percent for the 2008 LTCH PPS rate year, 2.9 percent for the 2009 LTCH PPS rate year, 2.5 percent for the 2010 LTCH PPS rate year, and 2.9 percent for the 2011 and 2012 LTCH PPS rate years. (We note that OACT develops its spending projections based on existing policy. Therefore, changes that have not yet been implemented are not reflected in the spending projections shown in this section.) We also considered OACT's most recent projections of changes in Medicare beneficiary enrollment that estimate a change in Medicare fee-for-service beneficiary enrollment of 0.2 percent in the 2008 LTCH PPS rate year, 0.5 percent in the 2009 LTCH PPS rate year, 0.1 percent in the 2010 LTCH PPS rate year, 0.2 percent in the 2011 LTCH PPS rate year and, 0.4 percent in the 2012 LTCH PPS rate year.

In the August 30, 2002 LTCH PPS final rule implementing the LTCH PPS (67 FR 55954), we set forth the implementing regulations, based upon the broad authority granted to the Secretary, under section 123 of the BBRA as amended by section 307(b) of the BIPA. Section 123(a)(1) of the BBRA required that the system ''maintain budget neutrality'' for FY 2003, that is, that estimated aggregate payments under the LTCH PPS would be projected to be equal to the estimated aggregate payments that would be made if the LTCH PPS would not be implemented for FY 2003. The methodology for determining the LTCH PPS standard Federal rate for FY 2003 that would ''maintain budget neutrality'' is described in considerable detail in the August 30, 2002 final rule (67 FR 56027 through 56037). As we discussed in that same final rule, our methodology for estimating payments for the purposes of BN calculations used the best available data and necessarily reflects assumptions in estimating aggregate payments that would be made if the LTCH PPS was not implemented. We also stated our intentions to monitor LTCH PPS payment data to evaluate the ultimate accuracy of the assumptions used in the BN calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS). To the extent that those assumptions significantly differ from actual experience, the estimated aggregate amount of actual payments during FY 2003 may result in significantly higher or lower estimated payments than the estimates upon which the BN calculations were based. In that same final rule, the Secretary exercised his broad authority in establishing the LTCH PPS and provided for the possibility of a one-time prospective adjustment to the LTCH PPS rates by October 1, 2006, in § 412.523(d)(3) (this deadline was revised to July 1, 2008, in the RY 2007 LTCH PPS final rule). The purpose of that provision was to prevent any significant difference between actual payments and estimated payments for the 1st year of the LTCH PPS, when we established the budget neutral Federal rate as required by the statute (discussed previously), from being perpetuated in the PPS rates for future years.

As we discussed in the RY 2007 LTCH PPS final rule (71 FR 27842 through 27844), because the LTCH PPS was only recently implemented, sufficient new data had not been generated that would enable us to conduct a comprehensive reevaluation of our BN calculations. Therefore, in that same final rule, we did not implement a one-time adjustment under § 412.523(d)(3) so that the effect of any significant difference between actual payments and estimated payments for the 1st year of the LTCH PPS would not be perpetuated in the PPS rates for future years. However, we stated that we will continue to collect and interpret new data as it becomes available in the future to determine if this adjustment should be proposed. Therefore, in the RY 2007 LTCH PPS final rule (71 FR 27842), we revised § 412.523(d)(3) by changing the original October 1, 2006 deadline (established in the August 30, 2002 final rule that implemented the LTCH PPS) to July 1, 2008, to postpone the requirement due to the time lag in the availability of Medicare data upon which this adjustment would be based.

As we discussed in the RY 2007 LTCH PPS final rule (71 FR 27843 through 27844), we now believe that after the conclusion of the 5-year transition period sufficient new data will be generated by the LTCH PPS for a comprehensive reevaluation of our FY 2003 BN calculations. Specifically, we explained that the final year of the 5-year transition to LTCH PPS payments based on 100 percent of the Federal rate for all LTCHs will begin for cost reporting periods beginning on or after October 1, 2006 (FY 2007), and end with cost reporting periods beginning before October 1, 2007 (FY 2008). After the conclusion of the 5-year transition period (October 1, 2007), we expect to have between 3 and 4 years (FY 2003 through FY 2006) of LTCH data generated since the implementation of the LTCH PPS. We note that there is a lag time between the submission of claims data and cost report data, and the availability of that data in the MedPAR files and HCRIS, respectively. Based on a comprehensive analysis of that data, we may then propose to make a one-time prospective adjustment to the LTCH PPS rates as provided for in § 412.523(d)(3). As also explained in that same final rule, we believe that postponing the deadline of the possible one-time prospective adjustment to the LTCH PPS rates provided for in § 412.523(d)(3) to July 1, 2008, would result in the availability of additional data generated under the LTCH PPS and, therefore, our decisions regarding a possible adjustment would be based on more complete and up-to-date data. This data would be reflective of LTCH behavior in response to the implementation of the LTCH PPS.

Evaluating the appropriateness of the possible one-time prospective adjustment will entail a thorough review of the actual Medicare costs incurred by LTCHs during the 1st year of the LTCH PPS, that is, for LTCH cost reporting periods beginning on or after October 1, 2002 through September 30, 2003. When we established the FY 2003 standard Federal rate to be budget neutral, we used the most recent LTCH cost data available at that time, and trended that data forward to estimate what Medicare would have paid to LTCHs under the TEFRA payment system if the PPS were not implemented (67 FR 56033). Our methodology for estimating payments for the purposes of BN calculations, utilized the best available data and necessarily reflected assumptions in estimating aggregate payments that would have been made had the LTCH PPS not been implemented. (The methodology for determining the LTCH PPS standard Federal rate for FY 2003 that would ''maintain budget neutrality'' is described in considerable detail in the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56037).) In that same final rule (67 FR 56036), we also stated our intentions to monitor LTCH PPS data to evaluate the ultimate accuracy of the assumptions used in the BN calculations (for example, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS). To the extent that those assumptions significantly differed from actual experience, the aggregate amount of actual payments during FY 2003 could be significantly higher or lower than the

estimates upon which the BN calculations were based.

At the outset of the LTCH PPS, we provided for the possibility of a one-time prospective adjustment at § 412.523(d)(3). Among other things, we wanted the opportunity to adjust the LTCH PPS Federal payment rate once data were available that reflected the actual cost-based payments that would have been made under the Medicare program during FY 2003 if the LTCH PPS had not been implemented, rather than perpetuate any significant difference between actual payments and estimated payments in the 1st year of the LTCH PPS used in determining the Federal rate into future years. Therefore, in the RY 2007 LTCH PPS final rule, we revised § 412.523(d)(3) to postpone the adjustment until July 1, 2008, because by that time, given the lag time typically involved in the entire cost report settlement procedure, we believe we will be able to utilize the most accurate data reflecting the actual costs incurred by LTCHs for cost reporting periods beginning during FY 2003.

We continue to believe that collecting and evaluating new data as it becomes available will allow us to have the best data from the 1st year of the LTCH PPS upon which to base an adjustment such as this. As we explained in the RY 2007 LTCH PPS final rule (71 FR 27844), there are many LTCHs with cost reporting periods from September 1 through August 30 which first became subject to the LTCH PPS on September 1, 2003. Given the lag time required for typical cost report settlement involving submission, desk review, and in some cases an audit, which can take approximately 2 additional years to complete (and we expect to audit a number of LTCH cost reports for the purpose of this analysis), we believe that the October 1, 2006 deadline established § 412.523(d)(3) is no longer reasonable or realistic. In fact, we believe that for cost reports for providers on August 2004 fiscal year ending date, we would be in possession of the most reliable cost report data, indicating the actual costs of the Medicare program of the LTCH PPS during the year in which we established the Federal payment rate by July 2007. Any proposed adjustment under § 412.523(d)(3), if finalized could then be implemented on July 1, 2008. Therefore, at this time, for the reasons discussed in this section, we believe that we still do not have sufficient new data to enable us to conduct a comprehensive reevaluation of our FY 2003 BN calculations. Accordingly, in this proposed rule, we are not proposing to make a one-time adjustment under § 412.523(d)(3) at this time.

V. Other Proposed Policy Changes for the 2008 LTCH PPS Rate Year

[If you choose to comment on issues in this section, please include the caption ''OTHER PROPOSED POLICY CHANGES FOR THE 2008 LTCH PPS RATE YEAR'' at the beginning of your comments.]

A. Short Stay Outlier (SSO) Cases

1. Background

In the August 30, 2002 rule for the LTCH PPS, under § 412.529, we established a special payment policy for SSO cases, that is, cases with a covered LOS that is less than or equal to five-sixths of the geometric average LOS for each LTC–DRG. When we established the SSO policy, we explained that ''[a] short-stay outlier case may occur when a beneficiary receives less than the full course of treatment at the LTCH before being discharged (67 FR 55995). Also in the August 30, 2002 LTCH PPS final rule, we stated that when we first described the policy, in the March 27, 2002 proposed rule, ''* * * we based the proposed policy on the belief that many of these patients could have been treated more appropriately in an acute hospital subject to the acute care hospital inpatient prospective payment system'' (67 FR 55995). Therefore, under the LTCH PPS, we implemented a special payment adjustment for SSO cases. Under the original SSO policy, for LTCH PPS discharges with a covered LOS of up to and including five-sixths the geometric average LOS for the LTC–DRG, we adjusted the per discharge payment under the LTCH PPS by the least of 120 percent of the estimated cost of the case, 120 percent of the LTC–DRG specific per diem amount multiplied by the covered LOS of that discharge, or the full LTC–DRG payment 67 FR 55995 through 56000).

As noted previously, generally LTCHs are defined by statute as having an ALOS of greater than 25 days. We stated that we believed that the SSO payment adjustment results in more appropriate payments, since these cases most likely did not receive a full course of a LTCH-level of treatment in such a short period of time and the full LTC–DRG payment would generally not be appropriate. Payment-to-cost ratio analyses indicated that if LTCHs received a full LTC–DRG payment for those cases, they would have been significantly ''overpaid'' for the resources they have actually expended in treating those patients (67 FR 55995 through 56000).

Furthermore, in establishing the SSO policy, we stated that we believed that providing a reduced payment for SSO cases would discourage hospitals from admitting these patients. We also believed that the policy did not severely penalize providers that, in good faith, had admitted a patient and provided some services before realizing that the beneficiary could receive more appropriate treatment at another site of care. As we explained in the FY 2003 LTCH PPS final rule, establishing a SSO payment for these types of cases addresses the incentives inherent in a discharge-based PPS for LTCHs for treating patients with a short LOS (67 FR 55995 through 56000).

2. Additional Discussion of the SSO Payment Formula

In the August 30, 2002 LTCH PPS final rule, when we first presented our rationale for establishing the SSO policy, we had proposed an adjustment to ensure appropriate payment for cases that we believed may have been transferred from an acute hospital prematurely. Even if a patient was an appropriate admission to the LTCH, we also believed that a short stay case at a LTCH most likely did not receive a full course of medical treatment during the short stay and that a full LTC–DRG payment would therefore, be inappropriate (67 FR 55995 through 56000).

In keeping with these concerns, and based on an evaluation of data from more than 3 years of the LTCH PPS, which revealed that a large percentage of SSOs had a covered LOS of 14 days or less, we revised our payment policy for SSO cases in the RY 2007 LTCH PPS final rule for subclause (I) LTCHs (71 FR 27845 through 27870).

Consistent with the Secretary's broad authority ''to provide for appropriate adjustments to the long-term hospital payment system * * *'' established under section 123 of the BBRA as amended by section 307(b)(1) of BIPA, for RY 2007, we reduced the cost-based option of the SSO policy adjustment to 100 percent of the estimated costs of the case for discharges occurring on or after July 1, 2006. We believed that by reducing the Medicare payment to a LTCH for a specific SSO case so that it would not exceed the estimated costs incurred for that case, we would be removing what we believed could be a financial incentive to admit and treat SSO cases that the then existing policy had established for LTCHs. We did not change the payment option of 120 percent of the per diem for a specific LTC–DRG multiplied by the covered LOS for that case because as described

in detail in the FY 2003 final rule LTCH PPS, when we first established the SSO policy, we found that by adjusting the per discharge payment by paying at 120 percent of the per diem LTC–DRG payment, once a stay reaches five-sixths of the geometric average LOS for the LTC–DRG, the full LTC–DRG payment will have been made (67 FR 55999). We continue to believe that this specific methodology, which results in a gradual increase in payment as the LOS increases without producing a significant payment ''cliff'' at any one point, provides a reasonable payment option under the SSO policy.

However, an analysis of the FY 2004 MedPAR data indicated that even under the existing SSO policy, LTCHs were admitting short stay patients that we believe could have continued treatment at the acute care hospitals (paid for under the IPPS) but could have been actually being prematurely discharged to LTCHs. Therefore, in the RY 2007 LTCH PPS final rule, we added a fourth payment option. This fourth payment alternative, a blend of an LTCH PPS amount that is comparable to the IPPS per diem payment amount, and 120 percent of the LTC–DRG per diem payment amount, as described below in this section, reflects our belief that as the length of a SSO stay increases, the case begins to resemble a more ''typical'' LTCH stay and, therefore, it is appropriate that incrementally, payment should be based more on what would otherwise be payable under the LTCH PPS and less on the IPPS-comparable amount. (Specifics of calculating the IPPS-comparable amount are set forth in considerable detail in the RY 2007 LTCH PPS final rule (71 FR 27852 through 27853).

We noted at the outset of the LTCH PPS for FY 2003, that the LTCH standard rate was calibrated based on LTCH resources expended in treating a patient population requiring long stays. Therefore, in establishing the SSO policy at the beginning of the LTCH PPS, we determined that it was appropriate that we not pay a full LTC–DRG payment for a patient stay not requiring those resources (67 FR 55995 through 56000). Our revision of the payment formula for SSOs for RY 2007 reflected our belief that where a case met our definition of a SSO at § 412.529(a), as the covered LOS increased, the case began to more closely resemble a characteristic LTCH case (and less like a short term acute care hospital case). Therefore, it was appropriate to base an increasing percentage of payment for SSOs on the LTC–DRG payment amount and a decreasing percentage of the LTCH PPS payment amount based upon the IPPS-comparable amount.

We continue to believe that in defining a LTCH as a hospital with an inpatient ALOS of greater than 25 days in section 1886(d)(1)(B)(iv)(I) of the Act, that the Congress was focusing on LOS as the essential characteristic of this provider category. Furthermore, we believe that the statutory change requiring the establishment of the LTCH PPS emphasized that the payment system should reflect the different resource use related to inpatient hospital services provided by hospitals specified by section 1886(d)(1)(B)(iv) of the Act, that is, by LTCHs (71 FR 27865). Specifically, we believe that the language of the statute indicates that the Congress believed that LTCHs *treat* or should be treating patients with different medical needs which results in those patients having a significantly longer LOS than those acute care hospital patients that we pay for under the IPPS.

In section 4422 of the BBA of 1997, which required that the Secretary develop a legislative proposal for the establishment of a PPS for LTCHs, the Congress specified that the system ''shall include an adequate patient classification system that reflects the differences in patient resource use and costs among such hospitals.'' Section 123 of the BBRA of 1999, which required implementation of a PPS for LTCHs for cost reporting periods beginning on or after October 1, 2002, specified, among other things, that the system be a per discharge payment system, based on diagnosis-related groups (DRGs), and ''reflects the differences in patient resource use and costs'' of long-term care hospital patients. Section 307(b) of the BIPA of 2000 required the Secretary ''to examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital DRGs that have been modified to account for different resource use of LTCH patients.''

When we developed the LTCH PPS for FY 2003, the most recently available MedPAR data (generally, for FYs 1998 and 1999) revealed that 52 percent of the Medicare patients at LTCHs nationwide had a LOS of less than two-thirds of the ALOS for the LTC–DRG to which they were grouped. Of these cases, 20 percent had stays of less than 8 days. Since payments under the LTCH PPS were based on the resources necessary for treatment requiring long term hospital-level stays, beginning with the start of the LTCH PPS, we established the SSO policy, to provide appropriate payment for stays that were significantly shorter than the ALOS for each specific LTC–DRG.

The original SSO policy focused on our concerns that a SSO patient would generally receive less than the full course of treatment at the LTCH before being discharged and a full LTC–DRG payment would not be appropriate (67 FR 55943, 55995 through 55996). As we noted in the RY 2007 LTCH PPS final rule, when we revised the SSO policy based on our analysis of the nearly 3 years of data since we designed the LTCH PPS, we believed that our SSO policy should reflect our conviction that many SSO patients could otherwise have continued to receive appropriate care in the acute care hospital from which they were admitted. Had these patients not been discharged from the acute care hospital, the additional days of treatment would have continued to have been paid for under the IPPS (71 FR 27845 through 27865).

Section 123 of the BBRA, as amended by section 307(b) of the BIPA, confers broad authority on the Secretary to implement a PPS for LTCHs, including provisions for appropriate adjustments to the payment system. This broad authority gives the Secretary flexibility to fashion a LTCH PPS based on both original policies, as well as concepts borrowed from other payment systems that are adapted, where appropriate to the LTCH context. In the RY 2007 LTCH PPS final rule, we formulated a payment adjustment under the LTCH PPS that we believed would result in an appropriate payment adjustment for those inpatient stays that we believe are not characteristic of LTCHS but could be more appropriately treated in another setting.

Subsequent to the RY 2007 LTCH PPS final rule, we have performed additional analysis of more recent data FY 2005 MedPAR data, and have determined that 42 percent of LTCH SSO discharges, or approximately 19,750 cases, had lengths of stay that were less than or equal to the average LOS plus one standard deviation of an IPPS discharge that is the same DRG as the LTC–DRG to which the case was assigned. (One standard deviation is a statistical test which measures the certainty of the average of a set of measurements for the purpose of data analysis. The standard deviation is the quantity commonly used by statisticians to measure the variation in a data set.) We believe that it is appropriate to compare the covered LOS of a LTCH case grouped to a particular LTC–DRG to the ALOS plus one standard deviation for the corresponding DRG under the IPPS. At one standard deviation, we have identified approximately 68 percent of

the IPPS cases within that DRG that were discharged from acute care hospitals and paid for under the IPPS. Using the statistical test of one standard deviation of the ALOS for each DRG under the IPPS, identifies the majority of IPPS discharges in any DRG.

We believe that the 42 percent of LTCH SSO cases in the RY 2005 MedPAR files with lengths of stay that are equal to or less than the IPPS ALOS plus one standard deviation for the same DRGs under the IPPS appear to be comparable to typical stays at acute care hospitals.

Although LTCHs are certified by Medicare as acute care hospitals, we believe that the Congress intended for the higher LTCH PPS payments to be made to LTCHs that treat patients requiring prolonged hospital-level care. Payments under the LTCH PPS, in compliance with the statutory mandates, have been calibrated based on ''the different resource use'' of LTCHs as compared to acute care hospitals paid under the IPPS. We believe that we are ''overpaying,'' under the LTCH PPS, for those SSO cases in LTCHs with covered lengths of stay that are equal to or less than the typical IPPS ALOS (that is, a LOS that is less than or equal to the average IPPS LOS plus one standard deviation for the same DRG under the IPPS).

We further believe that in excluding LTCHs from being paid under the IPPS, the Congress also recognized several types of hospital-level providers that offered a different type of treatment than could reasonably be paid for under the IPPS. Specifically, in the FY 2002 LTCH PPS final rule, we reviewed the history of LTCHs as hospitals excluded from the IPPS. At that time we quoted the legislative history of the 1983 Social Security Amendments which stated, with regard to LTCHs, that the ''DRG system was developed for short-term acute care general hospitals and as currently constructed does not adequately account for special circumstances of diagnoses requiring long stays'' (Report of the Committee on Ways and Means, U.S. House of Representatives, to Accompany HR 1900, H.R. Rept. No. 98025, at 141 (1983) (67 FR 55957)). Therefore, from the very outset of the IPPS, the Congress distinguished LTCHs from short term acute care hospitals by patients' lengths of stay. The PPS for LTCHs that we implemented in FY 2003, complied with the statutory mandate, cited above in this section, that payments under the LTCH PPS be calibrated based on ''the different resource use'' of these long-stay LTCH patients as distinct from the resources used to treat short stay patients at acute care hospitals and paid under the IPPS. Consequently, as we stated in the RY 2007 LTCH PPS final rule, we believe that ''LTCHs that admit SSO patients with lengths of stay more typical of an acute care hospital may be, in fact, behaving like acute care hospitals'' (71 FR 27847), and we also believe that it is reasonable for payments under the LTCH PPS for such cases to reflect this behavior.

Our data indicates that for the approximately 350 LTCHs in existence during FY 2005 that discharged approximately 130,000 cases, 46,600 discharges were SSO patients. During that same period, the approximately 3,600 acute care hospitals throughout the United States discharged approximately 12.7 million Medicare beneficiaries. At the approximately 3,600 acute care hospitals, treatment for Medicare patients is paid for under the IPPS, including those cases with a LOS that is the same as the LOS for SSO treated at a LTCH. However at a LTCH, even under the blend payment option of the SSO policy that we established for RY 2007, a percentage of the payment for those short stay patients at LTCHs may be based on a payment rate that was calculated to reflect the ''different resource use'' at LTCHs as compared to payment based on DRGs at acute care hospitals paid for under the IPPS. We believe that based on this analysis under the existing SSO policy for short stay patients where the patient's LOS is less than or equal to the average LOS plus one standard deviation for the same DRG at an acute care hospital, paid for under the IPPS, our blended payment methodology could result in an excessive payment.

Our data further indicates that typically LTCHs admit approximately 80 percent of their patients from acute care hospitals where their urgent conditions have been diagnosed, treated, and stabilized. We believe that when these patients are admitted to a LTCH for an extremely short stay, the LTCH appears to be serving as a step-down unit of the acute care hospital (71 FR 27857 through 27858). (Section 1886(d)(1)(B) of the Act, provides for the establishment of rehabilitation and psychiatric units of section 1886(d) hospitals (that is, acute care hospitals paid for under the IPPS) but not LTCH units.)

As we stated in the RY 2007 LTCH PPS final rule, ''* * * an analysis of the CY 2004 MedPAR files revealed that for specified DRGs for acute care cases following ICU/CCU days, there were significantly fewer 'recuperative' days (nearly 50 percent) for acute care outlier patients that were discharged from the acute care hospital and then admitted to a LTCH than for those patients that were discharged from the acute care hospital and not subsequently admitted to a LTCH. For example, under the IPPS for DRG 475 (Respiratory system diagnosis with ventilator support) and DRG 483 (Trach with mechanical vent 96+ hours or PDX except face, mouth and neck diagnosis), the number of ''recuperative'' days were considerably shorter at the acute care hospital if there was a discharge at the acute care hospital followed by an admission to a LTCH. The data in Table 5 is consistent with our belief that many LTCHs appear to be admitting some SSO patients that could have received the care at the acute care hospital. (71 FR 27857)

TABLE 5.—HCO LOS, ICU/CCU LOS, AND POST-ICU/CCU LOS FOR SELECTED INPATIENT DRGS BY POST-DISCHARGE STATUS

[Live discharges only]

DRG	Cases	LOS	Outlier ICU/CCU days	Post ICU/CCU days
475 (no LTCH)	3,887	32.5	20.5	12
475 (with LTCH)	515	29.6	22.6	7
483 (no LTCH)	3,257	73.6	53.6	20
483 (with LTCH)	2,353	45.7	41	4.7

In our analysis of what we believe are excessive payments under the existing LTCH PPS for the shortest SSOs, we are focusing on those SSO cases where a LTCH patient's covered LOS at the LTCH is less than or equal to the ALOS

plus one standard deviation for the same DRG at acute care hospitals (the ''IPPS comparable threshold'') and distinguishing between those SSO cases with lengths of stay that are less than or equal to the ''IPPS comparable threshold'' from those that exceed that threshold.

For the purposes of this discussion, whether the LTCH SSO case is within the ''IPPS comparable threshold'' is determined by comparing the covered LOS of that SSO case which has been assigned to a particular LTC–DRG to the ALOS for the same DRG under the IPPS. For example, if the covered LOS of the LTCH SSO case is equal to or less than the average LOS plus one standard deviation for the same DRG under the IPPS, the LTCH SSO case would be within the ''IPPS comparable threshold''. We believe an alternative payment option would be appropriate for such a case. We are considering an approach where if the covered LOS was equal to or less than the ''IPPS comparable threshold'' (defined above in this section) of the same DRG under the IPPS, the SSO payment methodology could be revised so that payment would be based upon the least of 100 percent of estimated costs of the case as determined under § 412.529(d)(2); 120 percent of the LTC–DRG per diem multiplied by the covered LOS of the case as determined under § 412.529(d)(1); the Federal prospective payment for the LTC–DRG as determined under § 412.529(d)(3); or an LTCH PPS amount comparable to the IPPS per diem amount as defined at § 412.529(d)(4), not to exceed the full IPPS comparable amount.

We would note that the RTI Report, discussed in Section XI. of this proposed rule, includes an RTI recommendation that ''* * * for LTCH cases whose LOS is within 1 standard deviation of the IPPS average LOS, LTCHs should be paid the IPPS rate. When this occurs, it suggests that LTCH is providing general acute care for these patients. This will allow LTCHs to treat these cases but be paid on an equitable basis with other acute hospitals since the shorter length stay would suggest general acute treatment is being provided.'' (Recommendation 11, p. 139) (We discuss the RTI report in Section XI. and have included the Executive Summary of the RTI Report as Addendum B of this proposed rule.)

Under this approach, SSO cases with covered lengths of stay that exceed the ''IPPS comparable threshold'' would continue to be paid under the existing SSO payment policy at § 412.529(c)(2) which is the least of: 100 percent of the estimate cost of the case as determined under § 412.529 (d)(2); 120 percent of the per diem of the LTC–DRG multiplied by the covered LOS of the case as determined under § 412.529(d)(1); the Federal prospective payment for the LTC–DRG as determined under § 412.529(d)(3); or a blend of the 120 percent of the LTC–DRG specific per diem amount and an amount comparable to the IPPS per diem amount as set forth in § 412.529 (c)(2)(iv). (The methodology for the calculation of these amounts is specified at § 412.529(d).)

We believe this approach is appropriate because we believe that we should continue to ensure that the LTCH PPS payments are appropriate for all cases; including those with a LOS that resemble cases typically treated at acute care hospitals. Therefore, as noted in the above discussion in this section, for the shortest SSO cases (that is, if the LTCH patient's covered LOS is less than or equal to the ''IPPS-comparable threshold''), the IPPS comparable per diem amount, capped at the full IPPS comparable amount that is used under the blend option of the current SSO policy, under this approach could be the fourth payment option in the SSO payment formula, replacing the blend option in the adjusted LTCH PPS payment formula at existing § 412.529(c)(2)(iv). We are considering this policy because we believe that based on our analysis for this particular type of case, it is inappropriate for Medicare to pay a LTCH a LTCH PPS payment that results in a per discharge payment amount that is greater than a hospital paid under the IPPS. Consistent with this approach, those SSO cases where the covered LOS exceeded the ''IPPS-comparable threshold,'' payment (that is, cases that more closely resemble a characteristic LTCH case and less a short term acute care hospital case) would continue to be made under the existing SSO policy at § 412.529(c)(2).

In considering this policy direction, at the present time, we do not believe that this approach for SSOs would be appropriate for the specific situation of a subsection (II) LTCH (that is, a LTCH meeting the definition specified in section 1886(d)(1)(B)(iv)(II) of the Act). We have addressed the uniqueness of this type of LTCH in several notices ((62 FR 45966, 46016, and 46026), (67 FR 55954 and 55974), (68 FR 34147 through 34148) (71 FR 27863)). We believe that subclause (II) LTCHs operate under a unique Congressional mandate which, as set forth in section 1886(d)(1)(B)(iv)(II) of the Act, circumscribes such a LTCHs' admission policies to the extent that it is being identified as a LTCH in order to provide a particular type of service (for which the ALOS is greater than 20 days) to a particular population (at least 80 percent have a principal diagnosis of neoplastic disease) (68 FR 34147). Exempting subsection (II) LTCHs under this approach is consistent with positions regarding the application of SSO policies to subclause (II) LTCHs. For example, in RY 2004, we provided a distinctive phase-in formula for subclause (II) LTCHs (§ 412.529(e)), and in the RY 2007 LTCH PPS final rule, we did not apply SSO policy revisions for subclause (I) LTCHs (§ 412.529(c)(2)) to subclause (II) LTCHs ((68 FR 34122, 34147 through 34148) (71 FR 27798,27863)).

To encourage a thorough and accurate evaluation of this approach, we have included a column in Table 3 of Addendum A of this proposed rule, which sets forth what would be the IPPS-comparable threshold for each LTC–DRG. We note that to determine the ''IPPS Comparable Threshold'' for some DRGs it may be necessary to supplement IPPS hospital statistical data due to a low volume of IPPS cases grouped to those DRGs. In addition, although IPPS hospital statistical data for the six transplant DRGs (103, 302, 480, 495, 512 and 513) and two error DRGs (469 and 470) may be available, we could assign a value of zero for the ''IPPS Comparable Threshold'' for these LTC–DRGs. This is consistent with our on-going policy under the LTCH PPS to assign a value of 0.0000 to the relative weights for these LTC–DRGs, as discussed in section III.D.

As we have stated in this section, we continue to be concerned about appropriate payment for SSO cases under the LTCH PPS, and therefore, we are considering a policy change for the purpose of differentiating between those SSO cases that we believe are more appropriately admitted and treated at LTCHs as distinguished from those with a LOS that resemble cases typically treated at acute care hospitals. As described in this section, for the shortest SSO cases (that is, if the LTCH patient's covered LOS is less than or equal to the ''IPPS-comparable threshold''), the IPPS comparable per diem amount, capped at the full IPPS-comparable amount that is used under the blend option of the current SSO policy, could be the fourth payment option in the SSO payment formula, replacing the blend option in the adjusted LTCH PPS SSO payment formula at existing § 412.529(c)(2)(iv). Consistent with this approach, those SSO cases where the covered LOS exceeded the ''IPPS-comparable threshold,'' payment (that is, cases that more closely resemble a characteristic

LTCH case and less a short term acute care hospital case) would continue to be made under the existing SSO policy at § 412.529(c)(2).

As we detailed in this discussion, we are concerned as to whether it is appropriate to pay cases that have a covered LOS in the LTCH that is less than or equal to the IPPS ALOS plus one standard deviation for the same DRG more than would be paid under the IPPS for a similar case. We are interested in soliciting comments on this approach as well as suggestions as to alternative ways in which to address our concerns.

Technical Correction.

We are proposing a technical correction to existing § 412.529(a) which would add the term ''covered'' immediately before the phrase ''length of stay'' in the initial definition of a SSO case. This technical correction is not a substantive policy change but rather corrects the regulatory definition of a SSO case so that it is consistent with policy determinations that we have made since the FY 2003 implementation of the LTCH PPS. We would note that utilizing only Medicare covered days for payment purposes has been our policy from the outset of the LTCH PPS, as is specified at § 412.503 where we defined ''discharge'' for purposes of payment, as ''* * * when the patient stops receiving Medicare-covered long-term care services * * *'' Furthermore, in subsequent revisions of our SSO policy, we included the term ''covered'' in new regulation text, that is, § 412.529(c)(2)(iv)(A) and proposed § 412.529(c)(3)(i)(B) and (c)(3)(ii)(B). We are proposing this technical correction to conform all references in the regulation text at § 412.529 to our existing policy regarding a SSO discharge which is determined based on the number of ''covered'' days in the patient stay.

3. Determination of Cost-to-Charge Ratios (CCRs)

In the FY 2007 IPPS final rule (71 FR 48117 through 48121), similar to the revisions to the HCO policy as discussed in IV.D.3.d. of the preamble of this proposed rule, we revised our methodology for determining the annual CCR ceiling and Statewide average CCRs under the LTCH PPS because we believe that those changes are more consistent with the LTCH PPS single payment rate for inpatient operating and capital costs. Under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, for discharges occurring on or after October 1, 2006, the LTCH CCR ceiling specified under § 412.529(c)(3)(iv)(C)(2) is calculated as three standard deviations above the corresponding national geometric mean total CCR (established and published annually by CMS). (As discussed in greater detail in this section, the FI may use a Statewide average CCR if, among other things, a LTCH's CCR is in excess of the LTCH CCR ceiling.) The LTCH total CCR ceiling is determined based on IPPS CCR data, by first calculating the ''total'' (that is, operating and capital) IPPS CCR for each IPPS hospital and then determining the average ''total'' IPPS CCR for all hospitals. The LTCH CCR ceiling is then established at 3 standard deviations from the corresponding national geometric mean total CCR. (For further detail on our methodology for annually determining the LTCH CCR ceiling, refer to the FY 2007 IPPS final rule (71 FR 48117 through 48119).) We also established that the LTCH ''total'' CCR ceiling used under the LTCH PPS will continue to be published annually in the IPPS proposed and final rules, and the public should continue to consult the annual IPPS proposed and final rules for changes to the LTCH total CCR ceiling that would be effective for discharges occurring on or after October 1 each year. Accordingly, in the FY 2007 IPPS final rule (71 FR 48119), we established a FY 2007 LTCH total CCR ceiling of 1.321, effective for discharges occurring on or after October 1, 2006.

In addition, under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, for discharges on or after October 1, 2006, we revised our methodology to determine the Statewide average CCRs under § 412.529(c)(3)(iv)(C) for use under the LTCH PPS in a manner similar to the way we compute the ''total'' LTCH CCR ceiling using IPPS CCR data (71 FR 48120). Specifically, under this revised methodology, we first calculate the total (that is, operating and capital) CCR for each IPPS hospital. We would then calculate a weighted average ''total'' CCR for all IPPS hospitals in the rural areas of the State and weighted average ''total'' CCR for all IPPS hospitals in the urban areas of the State. (For further detail on our methodology for annually determining the LTCH urban and rural Statewide average CCRs, refer to the FY 2007 IPPS final rule (71 FR 48119 through 48121).) We also established that the applicable Statewide average ''total'' (operating and capital) CCRs used under the LTCH PPS will continue to be published annually in the IPPS proposed and final rules, and the public should continue to consult the annual IPPS proposed and final rules for changes to the applicable Statewide average total CCRs that would be effective for discharges occurring on or after October 1 each year. Accordingly, in the FY 2007 IPPS final rule (71 FR 48122), the FY 2007 LTCH PPS Statewide average total CCRs for urban and rural hospitals, effective for discharges occurring on or after October 1, 2006, were presented in Table 8C of the Addendum of that final rule (71 FR 48303).

Additionally, in the FY 2007 IPPS final rule (71 FR 48119), under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, we established under the LTCH PPS SSO policy at § 412.529(c)(3)(iv)(C) that the FI may use a Statewide average CCR, which is established annually by CMS, if it is unable to determine an accurate CCR for a LTCH in one of the following three circumstances: (1) New LTCHs that have not yet submitted their first Medicare cost report (for this purpose, a new LTCH would be defined as an entity that has not accepted assignment of an existing hospital's provider agreement in accordance with § 489.18); (2) LTCHs whose CCR is in excess of the LTCH CCR ceiling; and (3) other LTCHs for whom data with which to calculate a CCR are not available (for example, missing or faulty data). Other sources of data that the FI may consider in determining a LTCH's CCR included data from a different cost reporting period for the LTCH, data from the cost reporting period preceding the period in which the hospital began to be paid as a LTCH (that is, the period of at least 6 months that it was paid as a short-term acute care hospital), or data from other comparable LTCHs, such as LTCHs in the same chain or in the same region.

Furthermore, in the FY 2007 IPPS final rule (71 FR 48121), we established under § 412.529(c)(3)(iv)(B) that, for discharges occurring on or after October 1, 2006, the CCR applied at the time a claim is processed will be based on either the most recently settled cost report or the most recent tentatively settled cost report, whichever is from the latest cost reporting period. Under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, in that same final rule, we also established at § 412.529(c)(3)(iv)(A) that, for discharges occurring on or after October 1, 2006, we may specify an alternative to the CCR computed under § 412.529(c)(3)(iv)(B) (that is, computed from the most recently settled cost report or the most recent tentatively settled cost report, whichever is later), or a hospital may also request that the FI use a different (higher or lower) CCR based on substantial evidence presented by the hospital. A complete discussion

of these revisions to our methodology for determining a LTCH's CCR is discussed in the FY 2007 IPPS final rule (71 FR 48119 through 48121).

4. Reconciliation of SSO Cases

In the FY 2007 IPPS final rule (71 FR 48121 through 48122), under the broad authority of section 123 of the BBRA and section 307(b)(1) of BIPA, we revised § 412.529(c)(3)(iv)(D) through (E), for discharges occurring on or after October 1, 2006, to codify in subpart O of 42 CFR part 412 the provisions concerning the reconciliation of LTCH PPS outlier payments, including editorial clarifications discussed in greater detail below in this section, that would more precisely describe the application of those policies.

Specifically, at § 412.529(c)(3)(iv)(D), similar to our current policy, we specified that for discharges occurring on or after October 1, 2006, any reconciliation of outlier payments will be based on the CCR calculated based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled. In addition, at § 412.529(c)(3)(iv)(E), we specified that for discharges occurring on or after October 1, 2006, at the time of any reconciliation, outlier payments may be adjusted to account for the time value of any underpayments or overpayments. Such an adjustment will be based upon a widely available index to be established in advance by the Secretary and will be applied from the midpoint of the cost reporting period to the date of reconciliation. We made these additional revisions to § 412.529(c)(3) because we believe that these changes would be more consistent with the LTCH PPS single payment rate, and because we believe it would be more appropriate and administratively simpler to include all of the regulatory provisions concerning the determination of LTCH PPS outlier payments applicable under the LTCH PPS regulations at subpart O of 42 CFR part 412. (For a complete discussion on the revisions made to the SSO reconciliation policy, refer to the FY 2007 IPPS final rule (71 FR 48121 through 48122).)

B. Proposed Expansion of Special Payment Provisions for LTCH Hospitals Within Hospitals (HwHs) and LTCH Satellites: Proposed Expansion of the 25 Percent Rule to Certain Situations Not Currently Covered Under Existing § 412.534

In the FY 2005 IPPS final rule we established the special payment provisions at § 412.534 for LTCHs that are HwHs and for satellites of LTCHs that are co-located with host hospitals. In developing that policy, we were particularly concerned with patient shifting between the host acute care hospitals and the co-located LTCH HwH or satellite for financial rather than for medical reasons, a scenario that we believed was encouraged by physical proximity, and that resulted in inappropriate increased cost to the Medicare program (69 FR 49191). We specified in the FY 2005 IPPS final rule that the payment adjustment for co-located LTCHs at § 412.534 was also applicable to hospitals other than acute care hospitals that served as hosts to both LTCH HwHs and satellites of LTCHs and that we had similar concerns to those stated above regarding patient shifting between such hosts and their co-located LTCHs. However, the vast majority of host hospitals continue to be acute care hospitals (69 FR 49198).

In the FY 2005 IPPS final rule, we quoted the FY 1995 IPPS final rule where we first discussed the concern that LTCH HwHs were, in effect, operating as step-down units of acute care hospitals. We explained that this was inconsistent with the statutory framework and that such a configuration could lead to two Medicare bills being submitted (one from the acute care hospital and the other from the LTCH) for what was essentially one episode of care (69 FR 49191 through 49192, 59 FR 45389).

When we first established the separateness and control criteria for LTCH HwHs at § 412.22(e) in the FY 1995 IPPS final rule, our main objective was to address the shifting of costly, long-stay patients from the host to the on-site LTCH, resulting in two hospital stays which would result in a financial windfall for both providers. We sought to protect the integrity of the IPPS by ensuring that those costly, long-stay patients who could reasonably continue treatment in an acute care hospital would not be unnecessarily discharged to an onsite LTCH, a behavior that would undermine the Medicare IPPS DRG payment system for acute care hospitals. We explained that the Federal standardized payment amount for the IPPS was based on the average cost of an acute care patient across all acute care hospitals. This is premised on the assumption that, on average, both high-cost and low-cost patients are treated at hospitals. Although we might pay a hospital less than was expended for a particular costly case, the hospital would also receive more than was expended for other less costly cases. However, an acute care hospital that consistently discharges higher cost patients to a post-acute care setting for the purpose of lowering its costs, undercuts the foundation of the IPPS DRG payment system which is based on averages, as noted above. In this circumstance, the hospital inappropriately would have incurred lower costs under the IPPS because the course of acute treatment had not been completed and the hospital did not incur those additional costs for what would have been the remainder of the patient's stay at the IPPS acute care hospital. We were concerned that once that patient was discharged from the IPPS acute care hospital, the patient, still under active treatment for the same condition, would be admitted to a LTCH, thereby generating a second admission and Medicare payment that would not have taken place but for the availability of the LTCH (59 FR 45389 through 45393).

With the growth of satellite entities, another category of co-located facility, we established ''separateness and control'' policies applicable to satellites of excluded hospitals, which we defined at § 412.22(h) as ''a part of a hospital that provides inpatient services in a building also used by another hospital or in one or more entire buildings located on the same campus as buildings used by another hospital.'' In the FY 2003 IPPS final rule at § 412.22(h), we finalized additional regulations governing the satellites of hospitals (64 FR 41532 through 41535 and 67 FR 50105 through 50106).

As detailed in the FY 2005 proposed rule and final rule for the IPPS (69 FR 28323 through 28327, 69 FR 49191 through 49214), with the explosive growth in the number of LTCH HwHs and concomitant cost to the Medicare program, we reevaluated the effectiveness of existing policies regarding HwHs. (OSCAR data showed that there were 105 LTCHs in 1993 of which 10 were HwHs. By October 2005, there were 373 LTCHs of which most were HwHs.) We reconsidered whether our regulations sufficiently protected the Medicare program from the problems that we envisioned in the FY 1995 IPPS final rule, as discussed in this section. We also questioned the effectiveness of the ''performance of basic hospital functions'' aspect of the ''separateness and control'' requirements alone because we were aware that some co-located providers had been establishing complex arrangements among corporate affiliates, and had obtained services from those affiliates, masking true corporate identities and therein diluting or impairing the effectiveness of the

separateness criteria in determining whether both hospitals were interrelated. While technically remaining within the parameters of the rule, these arrangements intermingled corporate interests so that the corporate distinctness was lost, thus side-stepping the intent of our regulations. (Although we have had similar concerns regarding patient movement between host hospitals and their satellites, there had never been any ''performance of basic hospital functions'' criteria established in § 412.22(h) because satellites are part of another hospital, and therefore, share a Medicare provider number with ''the hospital of which they are a part'' thus making it administratively burdensome to distinguish between the inpatient operating costs of the main hospital and its satellite(s).)

In the FY 2005 IPPS final rule, following serious consideration of the public comments that we received on our proposed policy revisions for LTCH HwHs and satellites (69 FR 28323 through 28327) and further evaluation of the issues, regulatory changes were finalized for HwH separateness and control policies at § 412.22(e) and a new payment adjustment was established for LTCH HwHs and for satellites of LTCHs at § 412.534. (We wish to note that the term ''satellite facility'' in this section refers to satellites of excluded hospitals, in particular, LTCHs, and does not include satellites of excluded units at § 412.25.)

Specifically, in the FY 2005 IPPS final rule (69 FR 49091 through 49214), effective for cost reporting periods beginning on or after October 1, 2004, for LTCHs we eliminated the performance of basic hospital functions test under § 412.22(e)(5)(i), the 15 percent test under existing § 412.22(e)(5)(ii), and the 75 percent of admissions from other than the host criteria at § 412.22(e)(5)(iii). A LTCH that met administrative separateness and control requirements at § 412.22(e)(1)(i) through (e)(1)(iv), under our finalized policy, satisfied the LTCH HwH requirements. (As noted above in this section, the performance of basic hospital functions test does not exist for satellites. Therefore, we did not similarly revise § 412.22(h).) However, we established a payment adjustment based upon an annual threshold criteria for LTCH HwHs or LTCH satellites at § 412.534 of 25 percent (or an applicable percentage) for LTCH discharges who were admitted from their host hospitals.

Section 412.534, Special payment provisions for long-term care hospitals within hospitals and satellites of long-term care hospitals, provides that if a LTCH HwH or LTCH satellite's discharges that were admitted from its host hospital exceed 25 percent (or the applicable percentage) of its total Medicare discharges for the LTCH HwH or LTCH satellite's cost reporting period, an adjusted payment would be made at the lesser of the otherwise payable amount under the LTCH PPS or the amount payable under the LTCH PPS that would be equivalent to what Medicare would otherwise pay under the IPPS. In determining whether a hospital met the 25 percent (or applicable percentage) criterion, patients transferred from the host hospital that had already qualified for outlier payments at the host would not count as a discharge that had been admitted from the host. (We commonly refer to this throughout the preamble and regulations text as the discharge not being counted towards the applicable threshold.)

It is important to note that if the hospital exceeds its threshold, LTCH discharges admitted from the host before the LTCH exceeds the 25 percent threshold, would be paid an otherwise unadjusted payment under the LTCH PPS. That is, not adjusted by § 412.534.

We also finalized additional adjustments to the 25 percent policy for specific circumstances. For LTCH HwHs or LTCH satellites located in a rural area, there is no payment adjustment applied under § 412.534 if no more than 50 percent rather than 25 percent of the Medicare patients discharged were admitted from the host. In addition, in determining the percentage of patients admitted from the host, any patients that had been Medicare outliers at the host and then discharged to the rural LTCH HwH or LTCH satellite would be considered as if they were admitted to the LTCH or satellite from a non-host hospital. In addition, in the case of a LTCH or LTCH satellite facility that was co-located with the only other hospital in the MSA or with an MSA-dominant hospital, as defined at § 412.534(e)(4), we provided a payment threshold that we believed responded to ''the unique needs of these communities'' (69 FR 49207). Under § 412.534(e)(2), we do not adjust payments to those LTCH HwHs or LTCH satellite facilities as long as the percentage of Medicare patients discharged from the LTCH HwH or LTCH satellite that were admitted from the urban single or MSA dominant host hospital, did not exceed the percentage of the *total* Medicare discharges in the MSA in which the hospital is located that were discharged from the host hospital, for the cost reporting period for which the adjustment would be made, but in no case is the percentage less than 25 percent or more than 50 percent. In addition, in determining the percentage of patients admitted to the LTCH from the urban single or MSA dominant host hospital, any patients that had been Medicare outliers at the host and then transferred to the LTCH HwH or LTCH satellite would be considered as if they were admitted to the LTCH from a non-host hospital. (When we refer to ''the 25 percent (or applicable percentage)'' patient threshold throughout this proposed rule, the ''applicable percentage'' refers to these special adjustments that we have provided for the special circumstances of rural, urban single, or MSA-dominant hospital or to the percentage associated with the transition policy, discussed below in this section.)

When implementing this policy, we also provided for a 4-year transition for existing LTCH HwHs or LTCH satellites that met the applicable criteria outlined in the regulations to allow a reasonable period during which hosts and co-located LTCH HwH or LTCH satellites and specific ''LTCHs under formation'' would be able to adapt to the requirements of the new policy. For cost reporting periods beginning on or after October 1, 2004 through September 30, 2005, these transitioned hospitals were to be grandfathered, with the 1st year as a ''hold harmless'' year. However, we required that even for these facilities that were being phased-in to the full payment adjustment, in the first cost reporting period, the hold harmless year, the percentage of discharges admitted from the host hospital to the LTCH could not exceed the percentage of discharges admitted from the host hospital to the LTCH HwH or LTCH satellite in its FY 2004 cost reporting period. (For the purposes of § 412.534, we established the hospital's cost reporting period during FY 2004, the last cost reporting period prior to the implementation of § 412.534, as a ''base period'' for purposes of establishing the gradual phase-in of the full payment threshold adjustment (69 FR 49196).

Therefore, while we allowed for a 4-year transition for those above specified LTCH HwHs and satellites for cost reporting periods beginning on or after October 1, 2004 and before October 1, 2005 (FY 2005), payments to the LTCH hospital or LTCH satellite facility would be limited based on the percentage that it had admitted during its FY 2004 cost reporting period. After the first grandfathered cost reporting period, these LTCH HwHs and LTCH satellite facilities were required to meet a percentage transition over the 3-year period beginning in FY 2006. For the second year (cost reporting periods

beginning on or after October 1, 2005 but before October 1, 2006), the percentage of Medicare discharges that may be admitted from the host with no adjustment may not exceed the lesser of the percentage of their discharges admitted from their host during its FY 2004 cost reporting period or 75 percent. For the third year (cost reporting periods beginning on or after October 1, 2006 but before October 1, 2007), the percentage of Medicare discharges that may be admitted from the host with no adjustment may not exceed the lesser of the percentage of its Medicare discharges admitted from its host during its FY 2004 cost reporting period beginning or 50 percent, and finally, 25 percent (or other applicable percentage) beginning with the fourth year (cost reporting periods beginning on or after October 1, 2007). Additionally, the 25 percent policy for co-located LTCHs is currently implemented in a location-specific manner, which means that the computation of the percentage of LTCH HwH or LTCH satellite discharges admitted from a host is based solely on the admissions from the physically co-located host and not from other campuses or remote locations which may share a common Medicare provider number with the host.

Although the payment adjustment at § 412.534 focused on LTCH HwHs and satellites of LTCHs and its host hospitals, the relationship between a receiving provider and any referring hospital has been an issue of concern for the Medicare program, even in the absence of co-location. Under section 1886(d)(5)(J) of the Act, added by section 4407 of the BBA of 1997, the Congress provided for a post-acute transfer policy which addressed certain patient discharges from acute care hospitals that subsequently received additional treatment delivered by a second Medicare provider. We believe that the Congress enacted this legislation to discourage acute care hospitals from prematurely discharging patients to another treatment setting in order to increase Medicare payment.

The Congress' enactment of the legislation authorizing the post-acute transfer policy is indicative of its serious concerns about patient shifting between acute and post-acute providers. In the case of the post-acute transfer policy, described above in this section, we focused on overpayment, under the IPPS, to the transferring hospital when a patient is prematurely discharged to another provider during the same episode of illness.

The payment adjustment for co-located LTCHs at § 412.534 was based on concerns similar to those underlying the post-acute transfer policy at § 412.4, that is, an inappropriately truncated hospitalization at a host facility and an admission to another provider, specifically a LTCH, for which an additional Medicare payment would be generated. However, the payment adjustment at § 412.534 is not applied to the transferring hospital but rather, to discharges from the co-located LTCH to which the presumably prematurely discharged patient has been admitted. Moreover, although the referring hospital under the post-acute transfer policy must be an acute care hospital, for the purposes of the payment adjustment at § 412.534, any hospital is a potential host if it is co-located with a LTCH HwH or LTCH satellite.

The payment adjustment under § 412.534 applies only to determining payments under the LTCH PPS for patients discharged from the LTCH or LTCH satellite which had been admitted to the LTCH or LTCH satellite from the onsite host hospital. For example, if an IRF was co-located with an LTCH HwH and upon discharge from the IRF, the patient was admitted to the onsite LTCH, upon discharge from the LTCH, Medicare payment for that LTCH discharge, would be governed by § 412.534 (69 FR 49198). This would also be the case for a patient shifted to a LTCH from a co-located host acute care hospital following complications from a surgical procedure; a patient requiring rehabilitation who has been discharged from a host IRF to a LTCH; or a patient who had been an inpatient at an IPF and was discharged to an on-site LTCH for care that could otherwise have been continued at the host hospital (that a significant number of LTCHs specialize in rehabilitation and psychiatric cases further supports this point (71 FR 4704 through 4719)). We believe that it is appropriate to pay the LTCH HwH or LTCH satellite that is co-located with an IRF or IPF and exceeds the applicable threshold at the IPPS equivalent rate and not a LTCH PPS rate that would be equivalent to the amount otherwise paid under the IRF or IPF PPS rate, since the HwH and the satellite LTCH are, as we explained earlier in this section, facilities that in many ways are comparable to an acute care hospital.

When we proposed the 25 percent (or applicable percentage) payment adjustment for co-located LTCHs in the FY 2005 IPPS proposed rule, MedPAC expressed concern that the 25 percent patient threshold policy would have a significant impact and could possibly lead to an inequitable situation for co-located LTCHs, as compared to freestanding LTCHs. Among their concerns were the following: freestanding LTCHs also have strong relationships with acute care hospitals, and that where on average LTCH HwHs receive 61 percent of their patients from their hosts, on average freestanding LTCHs receive 42 percent of their patients from their primary referring hospital; a 25 percent rule that only applied to LTCH HwHs and not to freestanding LTCHs could therefore be inequitable; and this approach could be circumvented by an increase in the number of freestanding LTCHs instead of LTCH HwHs (69 FR 49211).

In the RY 2007 LTCH PPS final rule, we also stated that according to a commenter, the data indicated "* * * that it is common practice for LTCHs * * * to admit patients from a single-source acute care hospitals" and that 71.2 percent of free-standing LTCHs admit more than 25 percent of their patients from a single source acute-care hospital (71 FR 27878).

Additionally, in comments received on a proposed policy to preclude common ownership of a host and a HwH (which was not finalized), two commenters asserted that the financial incentive to accept inappropriate patients from an acute care hospital could exist only when the acute care hospital and the LTCH were commonly owned and when there was common governance, a situation that "can exist even without co-location, that is, a freestanding LTCH, exempt from the requirements of § 412.22(e) could be owned and governed by the hospital from which it receives the majority of its referrals" (69 FR 49202). Despite the commenters' assertions, we do not believe that either common ownership or co-location are the only circumstances under which financial incentives exist for acute care hospitals to prematurely discharge Medicare patients to LTCHs for additional treatment during the same episode of patient care. In fact, we are aware anecdotally of the existence of "arrangements" between Medicare acute and post-acute hospital-level providers that may not have any ties of ownership or governance relating to patient shifting that appear to be based on mutual financial gain rather than on significant medical benefits for the patient. This could be the case if an acute care hospital discharges a Medicare beneficiary who continues to require hospital-level care, to preclude that patient's case from reaching outlier status at the acute care hospital, to an LTCH for additional treatment. Under this scenario, Medicare would pay the acute care hospital under the IPPS for

the beneficiary's care but the hospital would be able to avoid both the ''fixed loss'' amount and absorbing 20 percent of the remaining costs of patient care, as established under the IPPS outlier policy at subpart F of part 412. However, Medicare would be responsible for an additional payment, to the LTCH, under the LTCH PPS upon the patient's discharge from the LTCH. Accordingly, we believe that additional regulation in this area is both necessary and appropriate in order to protect the Medicare Trust Fund when generating two payments under two different payment systems for what was essentially one episode of beneficiary care.

When we finalized the payment adjustment at § 412.534 which focused solely on co-located LTCHs, that is, LTCH HwHs and satellites of LTCHs, and as we subsequently noted in the RY 2007 final rule for the LTCH PPS, we took considerable note of these comments and we have continued since that time to monitor the relationships between referring hospitals and LTCHs (71 FR 27878). Specifically, we have analyzed patient claims data from the 2004 MedPAR files for acute care patients who are admitted to free-standing LTCHs. We have analyzed the discharge and LOS information from this data to evaluate whether there is a significant difference in patient shifting behavior between co-located LTCHs and their host acute care hospitals and those free-standing LTCHs that admit a majority of their patients from particular referring acute care hospitals. (As stated previously, in fact for the purposes of the payment adjustment at existing § 412.534, any inpatient hospital-level provider is a potential host if it is co-located with a LTCH HwH or LTCH satellite (69 FR 49198). Similarly, free-standing LTCHs also admit patients from sources other than acute care hospitals. However, our data reveals that approximately 80 percent of all LTCH admissions are from acute care hospitals. Therefore, our data analysis discussed below in this section, focuses on the relationship between a referring acute care hospital and a LTCH.)

We also analyzed data on relationships between LTCHs and acute care hospitals from which they received a significant percentage of referrals. The RY 2005 MedPAR files indicate that only 12.0 percent of the then 174 free-standing LTCHs admitted 25 percent or less of their Medicare discharges from an individual acute care hospital; for 36.8 percent of those freestanding LTCHs, the percentage was between 25 and 50 percent; for 34.5 percent it is between 50 and 75 percent, and for 16.66 percent of those free-standing LTCHs it was between 75 and 100 percent of their Medicare discharges that were admitted from one acute care hospital. Thus, the data indicates that for over 50 percent of all freestanding LTCHs, at least 50 percent of their discharges were for patients admitted from an individual acute care hospital.

Generally, the data reveals minimal differences for cases grouped to the same DRG between the ALOS at the acute care hospital prior to an admission to a co-located LTCH and the ALOS at a referring acute hospital prior to admission to a free-standing LTCH. For example, we evaluated data from CY 2004 MedPAR files regarding LTC–DRG 475, Respiratory System Diagnosis with Ventilator Support, for both LTCH HwHs with more than 25 percent of their discharges admitted from their host hospital and free-standing LTCHs with more than 25 percent of their discharges admitted from an individual referring hospital. The ALOS for patients stays that have not reached outlier status at the host prior to being discharged to the co-located LTCH was 12.7 days and for free-standing LTCHs, the average LOS at their individual referring hospital was 12.9 days. Similarly, for LTC–DRG 416, Septicemia, the ALOS at the host acute care hospital was 9.8 days prior to admission to the co-located LTCH and the prior ALOS at the individual referring acute care hospital was 9.6 days prior to admission to the free-standing LTCH. We believe that this data indicates considerable similarity between the patient shifting behavior at acute care hospitals and co-located LTCHs and acute care hospitals and LTCHs that are not co-located. We would have expected the LOS at the acute care hospital that discharged patients to non-co-located LTCHs to be longer.

Furthermore, as noted above in this section, we have concentrated on the relationships between acute care hospitals and non-co-located LTCHs in this discussion, because approximately 80 percent of Medicare patients in LTCHs are admitted from acute care hospitals. However, we believe that the same concerns, articulated above, would also exist when the patient source is not an acute care hospital. There could still be a financial incentive on the part of the referring hospital (for example, an IRF, to prematurely discharge a beneficiary to a LTCH for additional post-acute treatment in order to avoid absorbing high treatment costs under the IRF outlier policy at § 412.624(e)(5)) that would result in two Medicare payments, one to the initial provider and the other to the LTCH for a single episode of beneficiary care. (We recognize that a patient could experience a medical crisis while an inpatient at an IRF, but typically, the most appropriate setting for such urgent care would be a general acute care hospital, rather than a LTCH.)

We believe that this data gives further credence to concerns articulated by MedPAC and the assertions made by the Lewin Group in its comments on our FY 2005 IPPS proposed rule regarding the ''strong relationships'' for referral purposes that exist between many acute care hospitals and free-standing LTCHs. Although our decade-old concerns, about LTCHs functioning as long-stay or step-down ''units'' of acute care hospitals, focused on co-located LTCHs (HwHs and LTCH satellites), we believe that this data indicates that many free-standing LTCHs may also be serving the same purpose as those that are co-located, that is, as functional step-down units of their primary referring acute care hospital.

We are also concerned about other attempts to evade our regulations at § 412.534. In implementing the HwH regulations at § 412.22(e) and the satellite regulations at § 412.22(h), we have consistently utilized the definition of ''campus'' that was established in the provider-based regulations at § 413.65(a)(2) which specifies that a campus is ''the physical area immediately adjacent to the provider's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within *250* yards of the main buildings, and any other areas determined on an individual basis, by the CMS regional office, to be part of the provider's campus.'' We have become aware of certain LTCH companies that have both established new LTCHs and/or are considering relocating existing HwHs or LTCH satellites so that they are at least 300 yards from the acute care hospital, thus side-stepping the intent of existing § 412.534. We believe that our proposals to extend the existing payment policy will address the type of ''gaming,'' described above in this section, as well as dealing with our concern that LTCHs appear to be admitting patients from referring hospitals prior to the delivery of a full episode of care so that we are making two payments, one to the referring hospital and another much higher payment under the LTCH PPS to the LTCH for what is essentially one episode of care. While reviewing the following proposals, we would also be interested in receiving suggestions as to other ways in which we could

effectively address attempts to evade the intent of our regulations governing patient-shifting between referring hospitals and LTCHs.

We first noted in the RY 2006 LTCH PPS final rule (71 FR 27878), our concern that in many cases the line of ''functional separateness'' between free-standing LTCHs and their major referral sources appears to have been erased. We believe that our analysis of patient movement between these facilities supports these concerns.

Therefore, under the broad authority conferred on the Secretary by section 123 of the BBRA, as amended by section 307(b) of the BIPA to implement a prospective payment system for LTCHs, including authority to provide for appropriate adjustments to the payment system, we are proposing to extend the payment adjustment at § 412.534, presently applicable to co-located subclause (I) LTCHs, to *all* subclause (I) LTCHs (section 1886(d)(1)(B)(iv)(I) of the Act), as explained below in this section. (For the purposes of the discussion of this proposed policy, ''subclause (I) LTCH'' is also intended to include satellites of these LTCHs. Our proposal regarding subclause (II) LTCHs, that is those LTCHs that meet the definition at section 1886(d)(1)(B)(iv)(II) of the Act, is discussed below in this section.) Specifically, at proposed § 412.536, we are setting forth proposed regulations that govern payments under the LTCH PPS for LTCH and LTCH satellite Medicare discharges admitted from non-co-located hospitals. We are proposing that the policy provisions of the existing 25 percent (or applicable percentage) payment adjustment would apply to any subclause (I) LTCH or LTCH satellite regardless of the physical proximity to the hospital from which it is accepting admissions. In order to apply this policy at all subclause (I) LTCHs and LTCH satellites, we are additionally proposing to revise existing § 412.534 to include a new provision at proposed § 412.534(h) that would extend the 25 percent (or applicable percentage) payment threshold to those grandfathered co-located subclause (I) LTCH HwHs and LTCH satellites at § 412.22(f) and § 412.22(h)(3)(i), respectively, for Medicare discharges that had been admitted from the grandfathered LTCH of LTCH satellite facility's host for cost reporting periods beginning on or after July 1, 2007. (We address the issue of satellites of subclause (II) LTCHs below in this section.

We are proposing to add new § 412.536 that will specify a comparable payment adjustment governing Medicare discharges from subclause (I) LTCHs and LTCH satellites that were admitted from non-co-located hospitals. We note that under this proposal, the payment adjustment at § 412.536 would also apply to those Medicare discharges from co-located subclause (I) LTCHs (HwHs and LTCH satellite facilities) that have been admitted from hospitals other than those with which they are co-located. We believe that this proposed policy will address our concerns with LTCHs and LTCH satellites that in many cases appear to be functioning like step-down units of acute care hospitals.

Furthermore, we believe it is appropriate that the same analytical standards and payment policies be applied by Medicare to all subclause (I) LTCHs. Therefore, we are proposing to amend existing § 412.534 to include subclause (I) grandfathered LTCH HwHs and LTCH satellite facilities, as well as proposing to use the same thresholds applicable to co-located LTCH HwHs and LTCH satellite facilities for subclause (I) LTCHs and LTCH satellite facilities that admit Medicare patients from non-co-located hospitals under § 412.536. Specifically, we are proposing that for cost reporting periods beginning on or after July 1, 2007, as we specify in proposed revised § 412.534(h), this payment adjustment would include those subclause (I) LTCH HwHs and satellites that have been ''grandfathered'' under § 412.22(f) and § 412.22(h)(3)(i) respectively and that are presently exempted from the existing payment adjustment for co-located LTCHs. As noted previously, both grandfathered HwHs at § 412.22(f) and satellite facilities at § 412.22(h)(3)(i) are permitted to retain their exclusions from the IPPS despite not meeting ''separateness and control'' policies with regard to their relationships with their host hospitals, as long as they continue to comply with applicable Medicare requirements. This proposed inclusion of grandfathered LTCH HwHs and LTCH satellites in the 25 percent (or applicable percentage) threshold policy would not affect their ability to continue to be ''grandfathered'' and excluded from the IPPS. Moreover, as noted above, the proposed 25 percent (or the applicable percentage) threshold policy governing discharges from subclause (I) LTCHs that had been admitted from any individual non-co-located hospital, at new proposed § 412.536, would also apply in determining payments under the LTCH PPS for Medicare discharges from LTCH HwHs and LTCH satellites that had been admitted from non-co-located hospitals other than their hosts, including grandfathered HwHs and LTCH satellites. Under the proposed policies applicable to grandfathered subclause (I) LTCH HwHs and LTCH satellites, we would pay an adjusted amount for those discharged Medicare patients that were admitted from their co-located host, under proposed § 412.534(h) or from any other referring hospital under proposed § 412.536, in excess of the applicable percentage threshold. The grandfathered LTCHs and LTCH satellite facility's Medicare discharges that reached outlier status at the host, at proposed § 412.534(b), or at the non-co-located referring hospital, as proposed at § 412.536, would not count towards the applicable threshold.

When we implemented the existing 25 percent (or applicable percentage) for cost reporting periods beginning on or after October 1, 2004, we opted to do so on a ''location-specific'' basis rather than based on Medicare provider numbers. That is, we applied the percentage threshold payment adjustment only to discharges from a specific location of a LTCH HwH or LTCH satellite that were admitted from the host hospital with which they share a building or campus. However, since implementing this policy, we have been contacted by numerous representatives of LTCH chains whose questions appear to indicate that the site-specific implementation of the threshold percentage had resulted in patient-shifting between hospital locations that shared a Medicare provider number and even between separately owned LTCHs (for their mutual advantage) that side-stepped the intent of our policy. Specifically, we offer the following example of a situation that was occurring: a host hospital at Location A was discharging patients to a LTCH HwH or satellite at Location B while the host hospital at Location B discharged patients to the LTCH HwH or satellite at Location A.

We believe that since we are proposing to expand the 25 percent policy to all subclause (I) LTCHs and LTCH satellite facilities it is appropriate to propose inclusion of LTCH HwHs and LTCH satellites, grandfathered respectively under § 412.22(f) and § 412.22(h)(3)(i), in our proposal. The provisions at proposed § 412.534(h) would apply for Medicare discharges from grandfathered LTCH and LTCH satellite facilities admitted from co-located hospitals and the provisions at § 412.536 would apply for discharges admitted from any individual non-co-located referring hospital. As we noted in our RY 2007 final rule regarding grandfathered HwHs, ''[W]e do not believe that it is reasonable to assume that by creating a limited exception for these hospitals, the Congress was

immunizing these facilities from any further regulation by the Secretary as to their growth and financial impact on the Medicare program. We do not believe the Congress was establishing a separate class of providers'' (71 FR 48109).

Furthermore, for those co-located LTCHs already subject to the 25 percent (or applicable percentage) payment adjustment at existing § 412.534, the proposed policy expansion at proposed § 412.536 would apply to payments under the LTCH PPS for patients discharged from co-located LTCHs (HwHs and satellites) that were admitted from referral sources *other* than their host hospital(s).

Therefore, we are proposing that, for cost reporting periods beginning on or after July 1, 2007, that a subclause (I) LTCH or LTCH satellite that discharges more than 25 percent (or applicable percentage) of Medicare patients admitted from *any* non-co-located individual hospital (that had not already reached outlier status, as discussed above) would be subject to the proposed payment adjustment at proposed § 412.536 for Medicare discharges from that hospital in excess of the applicable threshold. Furthermore, we believe that with the application of our proposed policy at § 412.536 to Medicare discharges from subclause (I) LTCH HwHs and LTCH satellites that were admitted from any individual non-co-located referring hospitals, we are closing the ''location-specific loophole'' established by the implementation of § 412.534, described above. The proposed change would affect all LTCHs or LTCH satellite Medicare discharges that were admitted from hospitals that are located on a different campus.

The proposed payment adjustment at proposed § 412.534(h) for grandfathered LTCH HwHs and LTCH satellite facilities will track the applicable provisions of the existing payment adjustment at § 412.534. Therefore, we are proposing at § 412.534(h) that for cost reporting periods beginning on or after July 1, 2007, the provisions of § 412.534 would also apply to grandfathered subclause (I) LTCH HwHs and LTCH satellite facilities. Accordingly, under the proposed changes to § 412.534, if the percentage of the grandfathered LTCH or LTCH satellite's discharged Medicare inpatient population that were admitted from its co-located host exceeds 25 percent (or the applicable percentage) of the LTCH's Medicare discharges for that cost reporting period, an adjusted payment would be made for those discharges that were admitted from that hospital beyond the 25 percent threshold (or the applicable percent threshold), at the lesser of the otherwise payable amount under subpart O of 42 CFR part 412 or the amount payable under subpart O that would be equivalent to what Medicare would otherwise pay under the rules at subpart A, § 412.1(a). (The specifics of this payment formula are explained in considerable detail in the RY 2007 LTCH PPS final rule (71 FR 27879).) In addition, we are proposing that for cost reporting periods beginning on or after July 1 2007, that the existing transition to the full 25 percent (or applicable percentage) threshold, specified at § 412.534(g) would apply, as well to these grandfathered subclause (I) LTCH HwHs and LTCH satellites. We provide at existing § 412.534(g), that in order to qualify for the transition, the LTCH HwH or LTCH satellite facility must have been paid under the provisions of subpart O on October 1, 2004, or was a hospital paid under the provisions of subpart O on October 1, 2005, and whose qualifying period under § 412.23(e) began on or before October 1, 2004. We believe that it is appropriate to apply the same October 1, 2004 base year to all subclause (I) co-located HwHs and satellites, including grandfathered subclause (I) LTCH HwHs and LTCH satellites, applicable to all other co-located LTCHs. Accordingly, the percentage set forth in § 412.534(g)(3), which is the lesser of the percentage of patients admitted from the host during its FY 2004 cost reporting period or the 50 percent threshold would apply to those grandfathered facilities with cost reporting periods beginning on or after July 1, 2007 and before October 1, 2007. Those grandfathered subclause (I) LTCH HwHs and LTCH satellites with cost reporting periods beginning on or after October 1, 2007 have the 25 percent (or applicable percentage) payment adjustment threshold, as specified in § 412.534(g)(4) applied immediately, with no phase-in.

In proposing the expansion of the 25 percent threshold payment adjustment policy for cost reporting periods beginning on or after July 1, 2007, to all subclause (I) LTCH and LTCH satellite facilities (including LTCH HwHs) for Medicare discharges admitted from non-co-located hospitals, we are proposing at the new § 412.536, to generally track the provisions of the payment formula at existing § 412.534. For example, in determining whether a hospital meets the 25 percent criterion, Medicare discharges that have already qualified for outlier payments at the non-co-located referring hospital would not be included in the count of Medicare discharges admitted from the referring hospital.

That is, even though the case would count as a discharge from the LTCH and be included in the denominator of the percentage calculation, because the patient had been an outlier at the referring hospital the case would not count towards determining whether or not the LTCH had exceeded the applicable threshold (that is, it would not be included in the numerator). An example of this is as follows: If one month prior to the end of a cost reporting period, a LTCH discharged 98 Medicare patients, 24 of which were admitted from an individual referring hospital, and during that last month, two additional patients were discharged from the LTCH that had been admitted from that referring hospital, at the close of the cost reporting period, there would have been a total of 100 discharges from the LTCH and the relevant concern would be to determine whether or not those last two cases would have caused the LTCH to exceed the 25 percent threshold. If the cases had achieved outlier status at the referring hospital, they would be not included in the percentage calculation (which would remain, for that referring hospital, at $^{24}/_{100}$) and not having caused the LTCH to exceed the 25 percent threshold, they would not be included in the numerator of the calculation. If both of those LTCH cases had been discharged from that referring hospital prior to having achieved outlier status, under our proposed policy, the percentage calculation would be 26 percent ($^{26}/_{100}$) and, having exceeded the 25 percent threshold, Medicare would apply the payment adjustment set forth in § 412.536 to the last discharge.

We are also proposing, under proposed § 412.534, that for those patients, the LTCH or LTCH satellite facility would be eligible for payment under the LTCH PPS with no adjustment even after the 25 percent (or applicable percentage) threshold was exceeded. (As under existing § 412.534, proposed § 412.536 will provide that a subclause (I) LTCH or LTCH satellite facility's Medicare discharges (including HwHs) admitted from any individual non-co-located referring hospital before the LTCH exceeds the 25 percent threshold or applicable threshold for that hospital would be paid an otherwise unadjusted payment under the LTCH PPS.)

We are also proposing not to extend the proposed payment adjustment in § 412.534(h) and § 412.536 to those LTCHs and LTCH satellite facilities that we refer to as subclause (II) LTCHs and LTCH satellites, established by section

1886(d)(1)(B)(iv)(II) of the Act. The policy that we are proposing for subclause (I) LTCHs and LTCH satellites is based on a calculation of the percentage of Medicare discharges that a LTCH admits from an individual hospital during a cost reporting period as compared to the LTCH's total Medicare discharges during that cost reporting period. Because of a significant policy distinction that we made at the start of the LTCH PPS for FY 2003, at this time we do not believe that this proposed policy should be applied to subclause (II) LTCHs and LTCH satellite facilities. With the implementation of the LTCH PPS, we revised the § 412.23(e)(2)(i) and (e)(3)(i) to calculate the ALOS based solely on Medicare patients who required long-stay hospitalizations at subclause (I) LTCHs defined by section 1886(d)(1)(B)(iv)(I) of the Act; however, we did not change the formula for calculating the ALOS for a LTCH governed by section 1886(d)(1)(B)(iv)(II) of the Act, implemented at § 412.23(e)(2)(ii), for a ''subclause (II)'' LTCH. We believed that in establishing a ''subclause (II)'' LTCH, the Congress provided an exception to the general definition of LTCHs under subclause (I). We had no reason to believe that the change in methodology for determining the average inpatient LOS would better identify the hospitals that the Congress intended to exclude under subclause (II) (67 FR 55974). Similarly, when we established the existing 25 percent or applicable percentage payment adjustment at § 412.534, we determined that its application to subclause (II) LTCHs was inappropriate because the designation of a subclause (II) LTCH was not dependent upon Medicare discharges (69 FR 49205). Therefore, we are not proposing to apply the expansion of the 25 percent policy that we are proposing at new § 412.536 and amended § 412.534 to LTCHs and LTCH satellite facilities defined under section 1886(d)(1)(B)(iv)(II) of the Act. The existing and proposed amended payment threshold adjustments at § 412.534 and at proposed § 412.536 for subclause (I) LTCHs and LTCH satellites are based solely on percentages of LTCH Medicare discharges. As stated above, we continue to believe that since we include both Medicare and non-Medicare discharges in our calculations for defining a subclause (II) LTCH at § 412.23(e)(2)(ii) that applying a payment adjustment that is based solely on Medicare discharges may not be appropriate. Furthermore, consistent with our policy not to include satellites of subclause (II) LTCHs which were specifically grandfathered at § 412.22(h)(3)(ii) in proposed § 412.536, we have excluded subclause (II) LTCH satellites in the proposed application of the 25 percent payment adjustment for co-located grandfathered LTCHs at proposed § 412.534(h).

In summary, we are proposing a new provision at § 412.534(h) that would apply the policies established under existing § 412.534 to grandfathered subclause (I) LTCH HwHs and LTCH satellites for Medicare discharges that were admitted from co-located host hospitals. We are also proposing to apply those policies at § 412.534 to Medicare discharges admitted from any individual non-co-located referring hospitals to all subclause (I)LTCHs and LTCH satellites at proposed § 412.536, generally tracking the existing regulation at § 412.534, where applicable.

We are also proposing additional adjustments to the 25 percent policy at § 412.536 for specific circumstances in order to be consistent with the policy for co-located LTCHs under § 412.534. At proposed § 412.536(c) for Medicare discharges from subclause (I) LTCHs or LTCH satellites located in rural areas, we are proposing that Medicare discharges in excess of 50 percent, rather that 25 percent of the LTCH's total Medicare discharges for a cost reporting period from an individual non-co-located referring hospital would be subject to the payment adjustment specified at proposed § 412.536(c). In addition, in the case of a rural subclause (I) LTCH or LTCH satellite facility, in determining the percentage of Medicare discharges admitted from a non-co-located referring hospital, any patients that had been Medicare outliers at the referring hospital and then discharged to the LTCH or LTCH satellite are not counted towards the threshold percentage (as described above).

In proposed § 412.536, we are also providing that if the non-co-located referring hospital is the only other hospital in the MSA or an MSA-dominant hospital as defined at proposed § 412.536(e)(4), we proposed to allow the subclause (I) LTCH or LTCH satellite facility a threshold percentage equal to the non-co-located referring hospital's percentage of total Medicare discharges for like hospitals in the MSA for the most recent fiscal year that data is available. Consistent with our policy at existing § 412.534(e), we also propose to apply a floor of 25 percent and a ceiling of 50 percent to this threshold for those hospitals described in proposed § 412.536(d)(4). As with the existing policy for co-located LTCHs, we believe that this adjusted payment threshold responds to ''the unique needs of these communities'' (69 FR 49207). Similar to the existing provisions at § 412.534(e)(2),we would not adjust payments to these hospitals as long as the percentage of Medicare patients discharged from the LTCH or LTCH satellite that were admitted from the non-co-located referring urban single or MSA-dominant hospital, did not exceed this threshold. In addition, in determining the percentage of Medicare discharges admitted to the LTCH or LTCH satellite facility from the urban single or MSA dominant hospital, any patients that had been Medicare outliers at the referring hospital before being admitted to the LTCH or LTCH satellite would not count towards the applicable threshold, as discussed above.

The proposed payment adjustment at § 412.536 would be synchronized with the phase-in of the current policy adjustment for LTCH HwHs and LTCH satellites at existing § 412.534(g). Therefore, for cost reporting periods beginning on or after July 1, 2007, and before October 1, 2007, the percentage of Medicare discharges that may be admitted from the non-co-located referring hospital with no payment adjustment is the lesser of the percentage of Medicare discharges admitted from the host during its FY 2005 cost reporting period or the 50 percent threshold. We note that under our proposed provision, at § 412.536, subclause (I) LTCHs and LTCH satellite facilities with cost reporting periods beginning on or after July 1, 2007, and before October 1, 2007, would be limited by the percentage of total Medicare discharges admitted from the referring non-co-located hospital during the FY 2005 cost reporting period, rather than utilizing the FY 2004 ''base year'' which is applicable under § 412.534. We are also proposing that in determining the percentage of Medicare discharges admitted from any referring hospital, patients who reached HCO status at the referring hospital before being admitted to the LTCH or LTCH satellite would not count towards the applicable threshold, as discussed above.

Subclause (I) LTCHs and LTCH satellite facilities with a cost reporting period beginning on or after October 1, 2007, would have the 25 percent (or applicable percentage) payment threshold applied. The percentage of Medicare discharges that a subclause (I) LTCH or satellite facility may admit from any individual non-co-located referring hospital with no payment adjustment for Medicare discharges admitted from that hospital may not

exceed 25 percent or the applicable percentage (the additional adjustments for rural, urban-single, or MSA-dominant hospitals).

It is important to note that we are also proposing that co-located subclause (I) LTCHs (HwHs and LTCH satellite facilities) would also be subject to the applicable payment adjustment threshold at § 412.536 for those Medicare discharges admitted from any individual hospital with which they are not co-located.

Finally, in proposing this payment adjustment, we believe that we are addressing policy concerns that are consistent with those that we originally expressed when we implemented the payment adjustment for LTCHs discharging patients that were admitted from co-located hospitals.

VI. Computing the Proposed Adjusted Federal Prospective Payments for the 2008 LTCH PPS Rate Year

In accordance with § 412.525 and as discussed in section IV.C. of this proposed rule, the standard Federal rate is adjusted to account for differences in area wages by multiplying the labor-related share of the standard Federal rate by the appropriate LTCH PPS wage index (as shown in Tables 1 and 2 of Addendum A to this proposed rule). The standard Federal rate is also adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the nonlabor-related share of the standard Federal rate by the appropriate cost-of-living factor (shown in Table 3 in section IV.D.2 of this preamble). In the RY 2007 LTCH PPS final rule (71 FR 27827), we established a standard Federal rate of $38,086.04 for the 2007 LTCH PPS rate year. In this proposed rule, based on the best available data and the proposed policies described in this proposed rule, we are proposing that the standard Federal rate for the 2008 LTCH PPS rate year would be $38,356.45 as discussed in section IV.C.3. of this preamble. We illustrate the methodology that would be used to adjust the proposed Federal prospective payments for the 2008 LTCH PPS rate year in the following examples:

Example:

During the 2008 LTCH PPS rate year, a Medicare patient is in a LTCH located in Chicago, Illinois (CBSA 16974). This LTCH is in the final year of the wage index phase-in, thus, the proposed full (that is, five-fifths) wage index values are applicable. The proposed full LTCH PPS wage index value for CBSA 16974 is 1.0751 (see Table 1 in Addendum A to this proposed rule). The Medicare patient is classified into LTC–DRG 9 (Spinal Disorders and Injuries), which has a current relative weight of 1.0424 (see Table 3 of Addendum A to this proposed rule).

To calculate the LTCH's proposed total adjusted Federal prospective payment for this Medicare patient, we compute the proposed wage-adjusted Federal prospective payment amount by multiplying the proposed unadjusted standard Federal rate ($38,356.45) by the proposed labor-related share (75.511 percent) and the proposed wage index value (1.0751). This proposed wage-adjusted amount is then added to the nonlabor-related portion of the proposed unadjusted standard Federal rate (24.489 percent; adjusted for cost of living, if applicable) to determine the proposed adjusted Federal rate, which is then multiplied by the LTC–DRG relative weight (1.0424) to calculate the proposed total adjusted Federal prospective payment for the 2008 LTCH PPS rate year ($42,250.14). (As discussed in section IV.C.5. of this preamble, for the 2008 LTCH PPS rate year, we are no longer proposing to apply a transition period BN offset (to account for the costs of the transition methodology) in determining the proposed total adjusted Federal prospective payment.) Table 6 illustrates the components of the calculations in this example.

TABLE 6

Unadjusted Proposed Standard Federal Prospective Payment Rate	$38,356.45
Proposed Labor-Related Share	× 0.75511
Proposed Labor-Related Portion of the Federal Rate	= $28,963.34
Proposed Full Wage Index (CBSA 16974)	× 1.0751
Proposed Wage-Adjusted Labor Share of Federal Rate	= $31,138.49
Proposed Nonlabor-Related Portion of the Federal Rate ($38,356.45 × 0.24489)	+ $9,393.11
Proposed Adjusted Federal Rate Amount	= $40,531.60
LTC–DRG 9 Relative Weight	× 1.0424
Proposed Total Adjusted Federal Prospective Payment*	= $42,250.14

*We are no longer proposing to apply a transition period BN offset to account for the costs of the transition methodology in determining the proposed total adjusted Federal prospective payment for RY 2008.)

VII. Transition Period

To provide a stable fiscal base for LTCHs, under § 412.533, we implemented a 5-year transition period whereby a LTCH (except those defined as ''new'' under § 412.23(e)(4)) received a LTCH PPS payment consisting of a portion based on reasonable cost-based reimbursement principles under the TEFRA system and a portion based on the Federal prospective payment rate (unless the LTCH elected payment based on 100 percent of the Federal rate). As discussed in the August 30, 2002 final rule (67 FR 56038), we believed that a 5-year phase-in provided LTCHs time to adjust their operations and capital financing to the LTCH PPS, which is based on prospectively determined Federal payment rates. Furthermore, we believed that the 5-year phase-in under the LTCH PPS also allowed LTCH personnel to develop proficiency with the LTC–DRG coding system, which will result in improvement in the quality of the data used for generating our annual determination of relative weights and payment rates.

Under § 412.533, the 5-year transition period for all hospitals subject to the LTCH PPS began with the hospital's first cost reporting period beginning on or after October 1, 2002 and extends through the hospital's last cost reporting period beginning before October 1, 2007. During the 5-year transition period, a LTCH's total PPS payment under the LTCH PPS was based on two payment percentages—one based on reasonable cost-based principles and the other based on the standard Federal prospective payment rate. The percentage of the LTCH PPS payment based on the LTCH PPS Federal rate increased by 20 percentage points each year, while the reasonable portion of the LTCH PPS payment based on cost-based principles decreased by 20 percentage points each year, for the next 4 fiscal years. For cost reporting periods beginning on or after October 1, 2006, Medicare payment to LTCHs will be determined entirely under the Federal rate.

In implementing the LTCH PPS, one of our goals was to transition hospitals to prospective payments based on 100 percent of the adjusted Federal prospective payment rate as soon as appropriate. Therefore, under § 412.533(c), we allowed a LTCH (other than new LTCHs defined at § 412.23(e)(4)), which was subject to a blended rate, to elect payment based on 100 percent of the Federal rate at the start of any of its cost reporting periods during the 5-year transition period.

Once a LTCH elected to be paid based on 100 percent of the Federal rate, it could not revert back to the transition blend.

VIII. Payments to New LTCHs

Under § 412.23(e)(4), for purposes of Medicare payment under the LTCH PPS, we define a new LTCH as a provider of inpatient hospital services that meets the qualifying criteria for LTCHs, set forth in § 412.23(e)(1) and (e)(2), and under present or previous ownership (or both), has its first cost reporting period as a LTCH beginning on or after October 1, 2002. As we discussed in the August 30, 2002 final rule (67 FR 56040), this definition of new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, described in section 1886(b)(7)(A) of the Act, as added by section 4416 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33). As stated in § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 1997, the payment amount for a ''new'' (post-FY 1998) LTCH is the lower of the hospital's net inpatient operating cost per case or 110 percent of the national median target amount payment limit for hospitals in the same class for cost reporting periods ending during FY 1996, updated to the applicable cost reporting period (see 62 FR 46019, August 29, 1997).

Under § 412.533(d), new LTCHs, as defined in § 412.23(e)(4), will be paid based on 100 percent of the standard Federal rate. As we discussed in the August 30, 2002 final rule (67 FR 56040), the transition period was intended to provide existing LTCHs time to adjust to payment under the new system. Since these new LTCHs with their first cost reporting periods as LTCHs beginning on or after October 1, 2002, would not have received payment under reasonable cost-based reimbursement for the delivery of LTCH services prior to the effective date of the LTCH PPS, we did not believe that those new LTCHs required a transition period in order to make adjustments to their operations and capital financing, as will LTCHs that have been paid under the reasonable cost-based methodology.

IX. Method of Payment

Under § 412.513, a Medicare LTCH patient is classified into a LTC–DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The LTC–DRG is used to determine the Federal prospective payment that the LTCH will receive for the Medicare-covered Part A services the LTCH furnished during the Medicare patient's stay. Under § 412.541(a), the payment is based on the submission of the discharge bill. The discharge bill also provides data to allow for reclassifying the stay from payment at the full LTC–DRG rate to payment for a case as a SSO (under § 412.529) or as an interrupted stay (under § 412.531), or to determine if the case will qualify for a HCO payment (under § 412.525(a)).

Accordingly, the ICD–9–CM codes and other information used to determine if an adjustment to the full LTC–DRG payment is necessary (for example, LOS or interrupted stay status) are recorded by the LTCH on the Medicare patient's discharge bill and submitted to the Medicare FI for processing. The payment represents payment in full, under § 412.521(b), for inpatient operating and capital-related costs, but not for the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists or the costs of photocopying and mailing medical records requested by a Quality Improvement Organization (QIO), which are costs paid outside the LTCH PPS.

As under the previous reasonable cost-based payment system, under § 412.541(b), a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h) and may be eligible to receive accelerated payments as described in § 413.64(g).

For those LTCHs that are being paid under the transition methodology set forth at § 412.533, for cost reporting periods that began on or after October 1, 2002, and before October 1, 2006, the PIP amount is based on the transition blend. For those LTCHs that are paid based on 100 percent of the standard Federal rate, the PIP amount is based on the estimated prospective payment for the year rather than on the estimated reasonable cost-based reimbursement. We exclude HCO payments that are paid upon submission of a discharge bill from the PIP amounts. In addition, Part A costs that are not paid for under the LTCH PPS, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthetists and the costs of photocopying and mailing medical records requested by a QIO, are subject to the interim payment provisions as specified in § 412.541(c).

Under § 412.541(d), LTCHs with unusually long lengths of stay that are not receiving payment under the PIP method may bill on an interim basis (60 days after an admission and at intervals of at least 60 days after the date of the first interim bill) and this should include any HCO payment determined as of the last day for which the services have been billed.

X. Monitoring

In the August 30, 2002 final rule (67 FR 56014), we described an on-going monitoring component to the new LTCH PPS. Specifically, we discussed on-going analysis of the various policies that we believe would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based PPS. As a result of our data analysis, we have revisited a number of our original and even pre-LTCH PPS policies in order to address what we believe are behaviors by certain LTCHs that lead to inappropriate Medicare payments. In recent **Federal Register** publications, we have proposed and subsequently finalized revisions to the interruption of stay policy in the RY 2005 LTCH PPS final rule (69 FR 25692), and we established a payment adjustment for LTCH HwHs and satellites in the FY 2005 IPPS final rule (69 FR 49191 through 49214).

In section V.A.2., we are revisiting the payment adjustment methodology established for SSOs (71 FR 27845) as a consequence of recent data analysis and discuss an approach being considered that would revise one of the existing four alternatives under the existing SSO payment methodology for certain SSO cases to an amount that would otherwise be paid under the IPPS.

As we discuss in section X., our monitoring of discharges between acute care hospitals and LTCHs reveals that a significant number of LTCHs that are ''free-standing'', that is, not co-located with other hospital-level providers (as defined in § 412.22(e) and § 412.22(h)), admit their patients from one specific acute care hospital. When we established the payment adjustment for LTCH HwHs and satellites of LTCHs at § 412.534, we stated our concern that these on-site LTCHs could be functioning as units of their host (generally, an acute care hospital), a configuration that is not permitted in section 1886(d)(1)(B) of the Act. (The statute specifically allows only for IRF and IPF units in acute care hospitals, but not for LTCH units.) As a result of our data monitoring and analysis, which is detailed in section V.B. of this proposed rule, we propose to expand the existing payment adjustment at

§ 412.534 to apply to certain situations not currently covered by the existing policy for LTCHs co-located with other hospitals.

As we discussed in the RY 2004 LTCH PPS final rule (68 FR 34157), the Medicare Payment Advisory Commission (MedPAC) endorsed our monitoring activity as a primary aspect of the design of the LTCH PPS. Furthermore, the Commission pursued an independent research initiative that led to a section in MedPAC's June 2004 Report to Congress entitled ''Defining long-term care hospitals''. This study included recommendations that we develop facility and patient criteria for LTCH admission and treatment and that we require a review by QIOs to evaluate whether LTCH admissions meet criteria for medical necessity once the recommended facility and patient criteria are established (70 FR 24209). In response to the recommendation in MedPAC's June 2004 Report, we awarded a contract to Research Triangle Institute, International (RTI), on September 27, 2004, to conduct a thorough examination of the feasibility of implementing MedPAC's recommendations.

We are continuing to pursue our on-going program, existing QIO monitoring and studies described in the RY 2006 LTCH PPS final rule (70 FR 24211), and our considerations of expanding the QIO role in the LTCH PPS. Furthermore, RTI has completed its examination of the feasibility of implementing MedPAC's recommendations in the June 2004 Report to Congress. However, we note that we do not anticipate expanding QIO activities during the current scope of work.

The Executive Summary of RTI's final report is included in Addendum B of this proposed rule and is available on our Web site at *http://www.cms.hhs.gov/LongTermCareHospitalPPS/02a_RTIReports.asp#TopOfPage.*

XI. MedPAC Recommendations: The RTI Contract

With the recommendations of MedPAC's June 2004 Report to Congress as a point of departure, RTI evaluated the feasibility of developing patient and facility level characteristics for LTCHs to identify and distinguish the role of these hospitals as a Medicare provider.

RTI completed this project in two phases. In Phase I, RTI prepared a background report summarizing existing information regarding LTCHs' current role in the Medicare system: Their history as Medicare participating providers; the types of patients they treat; the criteria QIOs currently use to review appropriateness of care in these settings; and the types of regulations they face as Medicare participating providers. This work reviewed prior analyses of these issues and included discussions with MedPAC, other researchers, CMS, the QIOs, and the hospital associations.

In Phase II, RTI collected additional information on tools currently used by the QIOs and the industry to assess patient appropriateness for admission; analyzed claims to understand differences between hospital patients with outlier stays in non-LTCHs and those treated in LTCHs; and visited different types of hospitals to observe first-hand how LTCH patients differ from those in other settings and how this pattern varies in different parts of the country. RTI worked with different associations, including the National Association of Long Term Hospitals (NALTH), the Acute Long Term Hospital Association (ALTHA), the AHA, and the American Medical Peer Review Association (AMPRA), as well as several of the larger LTCH chains. The final report submitted by RTI summarizes these efforts and makes numerous recommendations to CMS regarding LTCHs.

The reports on both Phase I and Phase II of RTI's research have been posted on our Web site at *http://www.cms.hhs.gov/LongTermCareHospitalPPS/02a_RTIReports.asp#TopOfPage.* Please note that this report does not represent our position or policy. We are currently evaluating RTI's recommendations regarding the feasibility of developing patient and facility level criteria from several standpoints. Most significantly, we are concerned that several of RTI's recommendations may require statutory changes. Furthermore, even among those recommendations for action that would be accomplished on a regulatory level, there are many significant issues that require further analysis. We have consistently encouraged meaningful contact between RTI and industry stakeholders throughout this research phase of the contract. Furthermore, RTI has solicited on-going involvement and will continue to seek such input from physicians who treat LTCH type patients both in LTCHs and as inpatients in other provider settings in forming a technical expert panel (TEP) to further develop some of its recommendations. RTI is currently determining the appropriate composition of this group, preparing a time table, and preparing an agenda for the TEP.

While the reports from both Phase I and Phase II of RTI's research are posted in their entirety on the CMS Web site at *http://www.cms.hhs.gov/LongTermCareHospitalPPS/02a_RTIReports.asp#TopOfPage,* we are including The Executive Summary of RTI's Phase II report in Addendum B to this proposed rule. This material is being reproduced as received from the contractors and does not represent our position or policy.

XII. Payment for Direct Graduate Medical Education (GME) (§ 413.79)

[If you choose to comment on issues in this section, please include the caption ''PAYMENT FOR DIRECT GRADUATE MEDICAL EDUCATION'' at the beginning of your comments.]

A. GME Background

Section 1886(h) of the Act, as added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272) and implemented in regulations at existing § 413.75 through § 413.83, establishes a methodology for determining payments to hospitals for the direct costs of approved graduate medical education (GME) programs. Section 1886(h)(2) of the Act, as added by COBRA, sets forth a payment methodology for direct GME costs involving the determination of a hospital-specific, base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable costs of GME for a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, the period beginning between October 1, 1983, through September 30, 1984). Generally, for cost reporting periods beginning on or after July 1, 1985, Medicare direct GME payments are calculated by multiplying the hospital's PRA by the weighted number of full-time equivalent (FTE) residents working in all areas of the hospital (and nonhospital sites, when applicable), and by the hospital's Medicare percentage of total inpatient days. In addition, as specified in section 1886(h)(2)(D)(ii) of the Act, for cost reporting periods beginning between October 1, 1993, through September 30, 1995, each hospital-specific PRA for the previous cost reporting period is not updated for inflation for any FTE residents who are not either a primary care or an obstetrics and gynecology resident. As a result, hospitals that trained primary care, and obstetrics and gynecology residents, as well as nonprimary care residents in FY 1994 or FY 1995, have two separate PRAs: One for primary care, and obstetrics and gynecology residents; and one for nonprimary care residents.

The Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113) (BBRA) amended section 1886(h)(2) of the Act to establish a methodology for the use of a national average PRA in computing direct GME payments for cost reporting periods beginning on or after October 1, 2000, and on or before September 30, 2005. The BBRA established a ''floor'' for hospital-specific PRAs that is equal to 70 percent of the locality-adjusted national average PRA. In addition, the BBRA established a ''ceiling'' that limited the annual inflation update to a hospital-specific PRA if the hospital's PRA exceeded 140 percent of the locality-adjusted national average PRA. Section 511 of the Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) (BIPA) increased the floor established by the BBRA to equal 85 percent of the locality-adjusted national average PRA. For purposes of calculating direct GME payments, each hospital-specific PRA is compared to the floor and the ceiling to determine whether a hospital-specific PRA should be revised.

Section 1886(h)(4)(F) of the Act established limits on the number of allopathic and osteopathic residents that a hospital may count for purposes of calculating direct GME payments. For most hospitals, the limits are the number of allopathic and osteopathic FTE residents training in the hospital's most recent cost reporting period ending on or before December 31, 1996.

B. Residents Training in Nonhospital Settings

1. Background

For purposes of direct GME payments, since July 1, 1987, the statute allows hospitals to count the time residents spend training in sites that are not part of the hospital (referred to as ''nonprovider'' or ''nonhospital sites'') under certain conditions. Section 1886(h)(4)(E) of the Act requires that the Secretary's rules concerning computation of FTE residents for purposes of direct GME payments ''provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.'' (Section 1886(h)(4)(E) of the Act, as added by section of 9314 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) (OBRA 86).) Regulations regarding the treatment of time spent by residents training in nonhospital sites for purposes of direct GME payments were first implemented in the September 29, 1989 final rule (54 FR 40286). In regulations adopted in that same rule at § 413.86(f)(3) (now § 413.78(c)), we stated that a hospital may count the time residents spend in nonprovider settings for purposes of direct GME payment if the residents spend their time in patient care activities and there is a written agreement between the hospital and the nonprovider entity stating that the hospital will incur all or substantially all of the costs of the program. The regulations at that time defined ''all or substantially all'' of the costs to include the residents' compensation for the time spent at the nonprovider setting. Before October 1, 1997, for IME payment purposes, hospitals were not permitted to count the time residents spent training in nonhospital settings. Section 4621(b)(2) of the BBA revised section 1886(d)(5)(B) of the Act to allow providers to count time residents spend training in nonprovider sites for IME purposes, effective for discharges occurring on or after October 1, 1997. Specifically, section 1886(d)(5)(B)(iv) of the Act was amended to provide that ''all the time spent by an intern or resident in patient care activities under an approved medical residency program at an entity in a nonhospital setting shall be counted towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs for the training program in that setting.'' In the July 31, 1998 final rule (63 FR 41004 through 41005) at § 412.105(f)(1)(ii)(C) and § 413.78(d) (formerly designated § 413.86(f)(4)), we specified the requirements a hospital must meet to include the time spent by residents training in a nonhospital site in its FTE count for portions of cost reporting periods occurring on or after January 1, 1999 for purposes of both direct GME and IME payments. Section 413.75(b) redefined ''all or substantially all of the costs for the training program in the nonhospital setting'' as the residents' salaries and fringe benefits (including travel and lodging where applicable), and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct GME. Section 413.78(e) provides that, in order for a hospital to be permitted to count FTE residents training in a nonhospital setting, a written agreement must be in place between the hospital and the nonhospital site providing that the hospital will incur the costs of the resident's salary and fringe benefits while the resident is training in the nonhospital site. The hospital must also provide reasonable compensation to the nonhospital site for supervisory teaching activities, and the written agreement must specify that compensation amount.

2. Moratorium on Disallowances of Allopathic or Osteopathic Family Practice Residents Training Time in Nonhospital Settings, and Questions and Answers (Qs&As) on CMS Web Site (Section 713 of the MMA and § 413.78)

In order for the hospital to incur ''all or substantially all'' of the costs in accordance with the regulations, the actual cost of the time spent by teaching physicians in supervising residents in the nonhospital setting must be compensated by the hospital. The amount of supervisory GME costs is dependent upon the teaching physician's salary and the percentage of time that he or she devotes to activities related to the residency program at the nonhospital site. (We note that the teaching physician's involvement in the provision of patient care is not considered attributable to direct GME.) As long as there are supervisory GME costs associated with the nonhospital training, the hospital must reimburse the nonhospital setting for those costs in order to count FTE resident time spent in the nonhospital site for purposes of IME and direct GME payments.

Many hospitals have entered into written agreements with nonhospital sites that state that the teaching physician is ''volunteering'' his or her time in the nonhospital site, and, therefore, the hospital is not providing any compensation to the teaching physician. Other hospitals have paid only a nominal amount of compensation for the supervisory teaching physicians' time in the nonhospital setting. Because § 413.78(d) requires that the hospital must incur ''all or substantially all'' of the direct GME costs, including those costs associated with the teaching physician, regardless of whether the written agreement states that the teaching physician is ''volunteering,'' we have required that the hospital pay these costs in order to count FTE residents training in the nonhospital site, as long as these teaching physician costs exist.

Section 713 of the MMA imposed a 1-year moratorium relating to certain nonhospital site teaching physician costs for the period from January 1, 2004, through December 31, 2004. During this 1-year period, we were required to allow hospitals to count FTE

allopathic or osteopathic family practice residents training in nonhospital settings for IME and direct GME payment purposes without regard to the financial arrangement between the hospital and the teaching physician practicing in the nonhospital setting to which the resident was assigned.

We instructed our contractors (formerly called ''fiscal intermediaries'' or ''FIs'') regarding the effect of section 713 of the MMA in the One-Time Notification (OTN), ''Changes to the FY 2004 Graduate Medical Education (GME) Payments as Required by the Medicare Modernization Act of 2003 (MMA)'' (CR 3071, Transmittal 61, issued on March 12, 2004). Generally, we stated in the OTN that, when settling prior year cost reports during this 1-year period, or for family practice residents actually training in nonhospital settings during this 1-year period, contractors should allow hospitals to count allopathic and osteopathic family practice residents training in a nonhospital setting for direct GME and IME payment purposes without regard to the financial arrangement between the hospital and the nonhospital site pertaining to the teaching physicians' costs associated with the residency program. For further information on this provision and for a summary of comments and responses related to this provision, please refer to the FY 2005 IPPS final rule (69 FR 49176).

Furthermore, in response to questions and concerns raised by the industry and Medicare contractors as to how to determine the costs associated with residency training at the nonhospital setting, as well as how and when to pay the nonhospital setting for these costs, we posted Qs&As on the CMS Web site on April 8, 2005 at *http://www.cms.hhs.gov/AcuteInpatientPPS/Downloads/nonhospQA.pdf.* In the Qs&As, in response to the question of whether there are situations where it is acceptable for the teaching physician to ''volunteer'' his or her time supervising residents at the nonhospital site, we stated that ''* * * the relevant question is not whether volunteerism is permissible, but whether there is a cost to the nonhospital site for supervising the resident training. If there is a cost, the hospital must reimburse the nonhospital site for those costs.'' We further stated that we believe in situations where the teaching physician receives a predetermined compensation amount for his or her time at the nonhospital site that does not vary with the number of patients he or she treats, there *is* a cost for the teaching physician time spent in GME activities. In contrast, if the physician's compensation at the nonhospital site is based solely on his or her billings, there is no cost for teaching physician time spent in GME activities. Accordingly, the statute continues to require that a hospital must pay ''all or substantially all'' the costs of training residents at the nonhospital site in order to count FTE residents training at that site, including teaching physician costs, as long as those costs exist.

3. Requirements for Written Agreements for Residency Training in Nonhospital Settings (§ 413.78(e))

In implementing section 1886(h)(4)(E) of the Act, in order to assist contractors in determining whether a hospital incurred ''all or substantially all'' of the costs of the program in the nonhospital setting, we required in § 413.78(c) and (d) (formerly § 413.86(f)(3) and (4)) that there must be a written agreement between the hospital and the nonhospital site stating that the hospital will incur ''all or substantially all'' of the costs of training in the nonhospital setting. We later specified at § 413.78(d)(2) that the written agreement must indicate the amount of compensation provided by the hospital to the nonhospital site for supervisory teaching activities.

In an effort to respond to concerns expressed by hospitals about the administrative burden associated with meeting the written agreement requirements, in the FY 2005 IPPS final rule (69 FR 49179), at § 413.78(e), we revised our regulations to allow hospitals to choose to either enter into a written agreement with the nonhospital site before the hospital may begin to count residents training at the nonhospital site, or to pay concurrently for the cost of training at the nonhospital setting. That is, in the absence of a written agreement, hospitals are required to pay ''all or substantially all'' of the costs of the training program in the nonhospital setting by the end of the third month following the month in which the training occurs.

4. Modification of the Definition of ''All or Substantially All of the Costs for the Training Program in the Nonhospital Setting''

We have met numerous times with industry representatives with the goal of developing a proposal which would respond to the concerns expressed by the teaching hospital community about the administrative burden associated with determining and documenting that hospitals are paying for ''all or substantially all'' of the costs for the training in the nonhospital setting. Some industry representatives recently suggested that we could ease administrative burdens by modifying the requirements hospitals must satisfy to meet the statutory requirement to incur ''all or substantially all'' of the costs by allowing a teaching physician to attest that at least 90 percent of the teaching physician's GME *time* is spent in patient care activities. However, we explained in response that the statutory test is tied to whether the hospital has incurred ''all or substantially all'' of the *costs* of the training at that site, not to how the teaching physician's GME time is spent. Therefore, we do not believe the attestation proposed by the industry adequately addresses the statutory requirement that the hospital incur ''all or substantially all'' of the *costs* of the training program at that site. We continue to believe that any Medicare policy approach to allowing hospitals to count FTE residents training in nonhospital settings for IME and direct GME payment purposes must be consistent with the statutory requirement that hospitals incur ''all, or substantially all'' of the costs of a training program in a nonhospital setting. The statute is clearly concerned about the cost to the nonhospital site, and we believe the statute has set a priority to move resources, in terms of both residents and funding, out into community settings. Therefore, where there is a cost to the nonhospital setting for training residents, we believe that the Medicare program is obligated to ensure that the nonhospital settings receive the funding they are entitled to receive from hospitals under the statute.

Accordingly, we continue to believe that our current definition of ''all or substantially all'' of the costs, which is based on the costs of the training program at the nonhospital site, is true to the intent of the statute. However, to address the industry's concerns related to burdensome documentation requirements, we propose to establish an alternative methodology that hospitals may choose to use in determining and paying for the teaching physician costs attributable to direct GME in the nonhospital sites. As we explain below in this section, we are proposing to revise the current definition of ''all or substantially all'' of the costs to require hospitals to incur a percentage of the costs of the training program at the nonhospital site. Our proposal also generally incorporates the industry representatives' concept of a 90 percent threshold, but does not specifically relate it to the percentage of time spent by the teaching physician on GME activities, as suggested by industry

representatives. Furthermore, as explained in more detail below in this section, in determining whether a hospital has met the 90 percent cost threshold, we are proposing to allow hospitals to use certain shortcuts or proxies in the place of actual cost data specific to each teaching physician at each nonhospital site. However, hospitals would always still have the option of calculating the actual teaching physician costs and the 90 percent threshold using actual cost data specific to all, or some of their applicable teaching physicians. That is, even if a hospital chooses to calculate the direct GME costs of a program using actual teaching physician time and cost data (as under existing regulations) rather than using the proxies, under this proposal, a hospital would only be required to pay *at least* 90 percent of the total of the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the teaching physicians' costs attributable to direct GME for a program at the nonhospital site. That is, we are proposing that a hospital would no longer be required to pay 100 percent of the residents' salaries and fringe benefits (including travel and lodging where applicable), plus the portion of the teaching physicians' costs attributable to direct GME at the nonhospital site. Instead, we are proposing that a hospital would be required to pay for 90 percent of the GME costs of a training program in a nonhospital site, and would have a choice between two approaches for calculating teaching physician's costs.

Currently, ''all or substantially all of the costs for the training program in the nonhospital setting'' is defined at § 413.75(b) as the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct GME. We are proposing to define ''all or substantially all of the costs for the training program in the nonhospital setting'' under § 413.75(b) (prospectively for cost reporting periods beginning on or after July 1, 2007) to mean at least 90 percent of the total of the costs of the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries attributable to direct GME. We believe this standard is consistent with the statute, in that hospitals would still be required to incur substantially all of the costs of training programs in nonhospital settings, and we would expect this standard to further encourage hospitals to shift training to nonhospital settings as intended by the statute. Under this revised definition of ''all or substantially all'' of the costs for the training program in the nonhospital setting, we would create a 90 percent threshold that hospitals must meet in order to count FTE resident time spent training at the nonhospital setting for IME and direct GME payment purposes. Additionally, under the new definition, hospitals would only have to incur a minimum of 90 percent of the costs of the program at a nonhospital site to count FTE resident time spent training at the site. Furthermore, as is the case with the current definition of ''all or substantially all,'' the new definition would not include overhead costs.

We are also soliciting comments on our proposed effective date for purposes of both direct GME and IME as to whether this proposal should be effective immediately for portions of cost reporting periods occurring on or after July 1, 2007, or alternatively, for cost reporting periods beginning on or after July 1, 2007. Although an effective date of ''portions of cost reporting periods occurring on or after July 1, 2007,'' would provide a more immediate response to concerns raised by teaching hospitals, we are concerned that establishing new policies in the middle of hospitals' cost reporting periods presents some logistical challenges, both from an implementation and an audit perspective. Therefore, we are proposing that the new definition of ''all or substantially all'' of the costs would be effective for both direct GME and IME for cost reporting periods beginning on or after July 1, 2007, although, as stated above in this section, we are specifically soliciting comments on this effective date.

As we explained, rather than adopt the industry's suggested standard of 90 percent of the teaching physicians' time spent in patient care activities, which we do not believe would be sufficiently true to the requirements of the statute, as a compromise, we propose to accept that hospitals have incurred ''all or substantially all'' of the costs of the program at the nonhospital site (and are therefore permitted to count the FTE residents training at the nonhospital site for IME and direct GME Medicare payment purposes) if the hospital incurs at least *90 percent of the costs* of training at that site. Under this proposal, a hospital would not have to demonstrate that it has incurred the costs of the teaching physician's time if it has otherwise incurred at least 90 percent of the nonhospital site training costs by paying the residents' salaries and fringe benefits (including travel and lodging where applicable) during the time spent training at the site. However, if the residents' salaries and fringe benefits (including travel and lodging where applicable) account for less than 90 percent of the costs of training at the nonhospital site, we propose the hospital would have to compensate the nonhospital site for its teaching physician costs so that the hospital is incurring at least 90 percent of the training program costs at the nonhospital site. If the hospital does not meet the 90 percent threshold by only paying for the cost of the residents' salaries and fringe benefits (including travel and lodging where applicable), we propose the hospital would have to meet the threshold by incurring some portion of the teaching physicians' salaries that is attributable to direct GME.

As previously stated in the Qs&As on the CMS Web site on April 8, 2005 at *http://www.cms.hhs.gov/AcuteInpatientPPS/Downloads/nonhospQA.pdf* (Answer #4), we believe there are typically no costs for teaching physician time if the physician's compensation at the nonhospital site is based solely and directly on the number of patients treated and for which he or she bills, which is the case with a solo practitioner. When the solo practitioner is not treating patients, he or she is not receiving payment for any other duties at the nonhospital site. Therefore, in this instance, there is no cost to the nonhospital site for the teaching physician's time. However, in the case of a group practice or clinic setting, the physician often receives a predetermined payment amount, such as a salary, for his or her work at the nonhospital site. This predetermined payment amount reflects all of his or her responsibilities at the nonhospital site, including treating patients, training residents, and other administrative activities (as applicable), and he or she may receive that predetermined payment from the nonhospital site regardless of how many patients he or she actually treats. The predetermined amount implicitly also compensates the physician for supervising residents. A portion of this implicit compensation is the cost attributable to teaching activities, and, in order to count the residents training at that site, the hospital must pay the nonhospital site this amount. However, there may be instances in a group practice, where a teaching physician is not receiving a form of predetermined compensation for his or her work at the nonhospital site.

For example, three physicians may work in the same office and share overhead expenses such as electricity and rent, but otherwise, there is no sharing of revenues from patient care activities, and the physicians operate as solo practitioners and are not compensated according to some predetermined arrangement. In cases such as these, we assume that the teaching physician is functioning as a solo practitioner and that teaching physician costs for GME training at the nonhospital site are zero. Accordingly, this proposal affects members of group practices where the teaching physician receives a salary or other form of predetermined compensation for his or her work at the nonhospital site. However, we note that under our proposal, in the case of solo practitioners, hospitals must continue to pay for at least 90 percent of the total cost of the residents' salaries and fringe benefits, including travel and lodging where applicable.

5. Implementation of a 90 Percent Cost Threshold

In proposing a new revised definition of ''all or substantially all'' of the costs of the program at a nonhospital site, and in establishing a 90 percent threshold, there are several variables that are important in the methodology for determining the minimum amount that a hospital must pay in order to count FTE residents training in a nonhospital site. These variables are: teaching physicians' salaries, residents' salaries and fringe benefits (including travel and lodging where applicable), the number of hours per week that the teaching physician spends in direct GME (not billable patient care) activities in the nonhospital site, and the number of hours that a nonhospital site is open each week. To provide the reader with a context for the new methodology that we are proposing, we will first explain the methodology briefly, provide two examples, and then proceed to an in-depth discussion of each variable (see section XII.B.5.b. of the preamble of this proposed rule).

a. Methodology

One of the primary complaints voiced by the hospital industry over the past several years is that our policy requiring hospitals to determine the portion of the teaching physician cost attributable to direct GME in the nonhospital site results in an untenable documentation burden since many physicians are reluctant to disclose their salary information to the hospitals. One solution to this problem suggested by the hospital industry is to use national average physician salary information as a proxy for teaching physician-specific salaries in the determination of the total cost of the program at a nonhospital site. In addition, since the cost of the teaching physician time that the hospital must incur is based on the amount of time the teaching physician spends in nonpatient care GME activities, the hospital industry has been concerned that determining this GME time could require burdensome time studies. Therefore, we are proposing to adopt an alternative methodology that hospitals may choose to use, instead of actual costs, to calculate teaching physician costs in nonhospital sites. Using this alternative methodology, to facilitate a less burdensome way for a hospital to calculate the teaching physician costs associated with GME training at the nonhospital site, we propose to allow hospitals to use 3 hours per week as a presumptive standard number of hours that a teaching physician spends in nonpatient care GME activities at a particular nonhospital site. To determine the percentage of the average salary associated with the 3 hours the teaching physician is presumed to spend in nonpatient care GME activities, we propose that a hospital would divide 3 hours by the number of hours the nonhospital site is open each week. Next, we propose that the hospital would multiply this percentage of time spent in nonpatient care GME activities by the national average salary of that teaching physician's specialty to calculate the cost of the teaching physician's direct GME time. The cost of the teaching physician's direct GME time would then be added to the costs of the salaries and fringe benefits (including travel and lodging expenses, where applicable) of the FTE resident(s) rotating in that program to that nonhospital site to determine the GME costs for that program at that site. (If FTE resident(s) are not rotating to a particular nonhospital site throughout a whole year, then the national average salary of the teaching physician would be prorated accordingly. The cost of the residents' salaries and fringe benefits (including travel and lodging where applicable) would already be reflective of an FTE count). We propose that the hospital must pay at least 90 percent of these total GME costs for the program at that nonhospital site in order to count the resident(s) training there for direct GME and IME purposes. If the hospital is already paying all, or even a portion of the residents' salaries and fringe benefits (including travel and lodging where applicable), and if the amount that the hospital is paying for the residents' salaries and fringe benefits (including travel and lodging where applicable) is equal to at least 90 percent of the GME costs at the nonhospital site (that is, the 90 percent threshold), then the hospital would be considered to be incurring ''all or substantially all'' of the costs, and need not incur an additional amount for teaching physician compensation to be permitted to include the FTE residents training in the nonhospital site in its FTE count for purposes of direct GME and IME payments. However, if the costs of the residents' salaries and fringe benefits (including travel and lodging where applicable) does not equal at least 90 percent of the GME costs of the training program at the nonhospital site, then the hospital must incur an additional amount for teaching physician costs based on the national average salary information until it is incurring at least 90 percent of the GME costs for that nonhospital site program. That is, under the proposed alternative definition of ''all or substantially all'' of the costs, a hospital is required to incur at least 90 percent of the total GME costs for a particular program at a particular nonhospital site. The GME costs of a particular program at a particular nonhospital site consist of FTE residents' salaries and fringe benefits (including travel and lodging costs where applicable), and the portion of teaching physician compensation (which may be based on national average survey data) attributable to direct GME. As will be explained in more detail below in this section, the hospital always has the option of documenting the actual teaching physician's cost using actual time or salary information to pay at least 90 percent of the total costs of the program at the nonhospital site. In summary, the formula for determining the 90 percent threshold, or the minimum amount that a hospital must pay for the GME costs of a particular program at a particular nonhospital site is:

0.90 × [(sum of each FTE resident's salary + fringe benefits (including travel and lodging where applicable)) plus the portion of the teaching physician's compensation attributable to direct GME activities.]

The portion of the teaching physician's compensation attributable to direct GME activities may be calculated as follows:

(3/number of hours nonhospital site is open per week) × (national average salary for each teaching physician)*

* The number of teaching physicians included in this formula is subject to a 1:1

resident to teaching physician limit, as explained below in this section.

The following are two examples of the proposed alternative methodology:

Example 1: Assume one teaching physician is supervising one FTE resident in a nonhospital site for 1 residency year. The national average published salary amount for that teaching physician's specialty is $120,000, and he works in a clinic that is open 60 hours per week. Using the standard of 3 hours spent in GME activities per week, the teaching physician spends 5 percent of his time in GME activities (that is, 3/60 = 0.05 or 5 percent). To determine the cost of the teaching physician's time, the hospital may make the following calculation: *$120,000 × 0.05 = $6,000.* This teaching physician's cost is added to the resident's salary and fringe benefits to calculate the cost of the training at the nonhospital site in the following manner: *$6,000 [cost of one teaching physician] + $60,000 [actual cost of the FTE residents' salary & fringe benefits] = $66,000.* To meet the proposed new definition of ''all or substantially all,'' the hospital would be required to pay at least 90 percent of the costs of the training program at the nonhospital site, which in this example equals $59,400 (that is, 0.90 × $66,000). Since in this case the cost of one FTE resident's salary and fringe benefits is $60,000, the hospital could reach the 90 percent cost threshold by simply incurring the resident's salary and fringe benefits during training at the nonhospital site.

Example 2: Assume one teaching physician is supervising one FTE resident in a nonhospital site for an entire residency year. The national average published salary amount for that teaching physician's specialty is $200,000, and she works in a clinic that is open 40 hours per week. Using the standard of 3 hours spent in GME activities per week, the teaching physician spends 7.5 percent of her time in GME activities (that is, 3/40 = 0.075 or 7.5 percent). To determine the cost of the teaching physician's time, the hospital may make the following calculation: *$200,000 × 0.075 = $15,000.* This teaching physician's cost is added to the resident's salary and fringe benefits to calculate the cost of the training at the nonhospital site in the following manner: *$15,000 [cost of one teaching physician] + $60,000 [actual cost of the FTE residents' salary and fringe benefits] = $75,000.* To meet the proposed new definition of ''all or substantially all,'' the hospital would be required to incur at least 90 percent of the costs of the training at the nonhospital site, which in this example equals $67,500 (that is, 0.90 × $75,000). Since in this case the cost of one FTE resident's salary and fringe benefits is $60,000, the hospital has not met the 90 percent threshold by only incurring the resident's salary and fringe benefits. The hospital would have to incur at least an additional $7,500 of the cost (that is, $67,500 − $60,000) to reach the 90 percent threshold to be permitted to count the FTE resident for IME and direct GME purposes. Alternatively, the hospital could document the actual teaching physician cost using time or salary information specific to that teaching physician at that site, and use that amount to calculate 90 percent of the actual training program costs.

b. Explanation of Variables

In the following section, we discuss each variable in the proposed methodology for determining the cost that a hospital must incur in order to count FTE residents training in nonhospital sites, and explain our rationale for proposing to employ each of these variables. As stated previously, the proposed variables are: teaching physicians' salaries; residents' salaries and fringe benefits (including travel and lodging where applicable); the number of hours per week that the teaching physician spends in nonpatient care GME activities in a nonhospital site; and the number of hours that a nonhospital site is open each week.

(1) National Average Physician Salary Data by Specialty

One of the foremost objections voiced by the hospital industry to our current policy is the documentation burden associated with requesting salary information from individual teaching physicians in nonhospital sites. Hospitals believe that many teaching physicians in nonhospital sites are reluctant to disclose their personal salary information, yet this disclosure is necessary to enable the hospital to determine and pay the nonhospital site for the actual costs of the GME program in accordance with our current regulations. One suggestion mentioned by the hospital industry as an alternative to obtaining individual teaching physician-specific salary information is to allow hospitals to use national average salary survey data by specialty. We understand that there are a number of organizations that conduct annual national surveys on physician compensation. We are proposing to allow hospitals to use physician compensation survey data as a proxy to determine the teaching physician costs associated with GME in a program at a particular nonhospital site. For example, one such national organization that collects data on physician compensation that we are considering using is the American Medical Group Association (AMGA). AMGA's *2006 Medical Group Compensation and Financial Survey* was performed under contract by RSM McGladrey. Founded in 1950, AMGA (formerly the American Association of Medical Clinics) is a trade association which dedicates itself to making the ''* * * multi-specialty medical group model the preferred delivery system for patient-centered, affordable, quality medical care in America,'' and represents 283 medical groups that include an average of 272 physicians. AMGA's use of the term ''medical group'' is based on the American Medical Association's definition of ''group practice,'' which is defined as a group that ''includes the provision of health care services by three or more physicians who are formally organized as a legal entity governed by physicians in which business, clinical, and administrative facilities, records and personnel are shared and the practice goals, objectives, and values are commonly defined. Income from medical services provided by the group is treated as receipts of the group and is distributed according to some prearranged plan.'' AMGA has been performing surveys like the *2006 Medical Group Compensation and Financial Survey* since 1986. The 2006 survey was sent to over 2,600 medical groups, including medical groups that are not members of AMGA. To give readers an idea of the average compensation amounts in the survey, we have randomly selected 10 specialties included in the 2006 survey and listed their compensation information in Table 7. If we adopt the AMGA survey for use to determine the cost of teaching physicians' time attributable to GME, we would make the salary information for all specialties accessible to hospitals on our Web site and would provide it in a manner similar to Table 7.

TABLE 7.—PHYSICIAN SALARY INFORMATION

*Specialty	Mean salary (in dollars)	Median salary (in dollars)
Cardiology	$411,916	$363,081
Dermatology	336,531	306,935
Family Medicine	187,891	178,366
Gynecology and Obstetrics	286,418	271,273
Internal Medicine	192,264	183,840

TABLE 7.—PHYSICIAN SALARY INFORMATION—Continued

*Specialty	Mean salary (in dollars)	Median salary (in dollars)
Ophthalmology	307,044	281,112
Pediatrics & Adolescent: General	191,122	182,186
Physical Medicine and Rehabilitation	208,442	207,004
Diagnostic Radiology: Non-Interventional	415,521	400,000
General Surgery	331,970	310,736

*This information was obtained from the *2006 Medical Group Compensation and Financial Survey* published by the American Medical Group Association® (AMGA). For further information, visit AMGA's Web site at *http://www.amga.org/*.

We are soliciting comments as to whether we should use the mean or median compensation amounts for purposes of determining the teaching physicians' cost. In addition, although we recognize that there are generally geographic variations in salary amounts within each specialty (and, although not included in Table 7, AMGA does provide some detail of salaries by geographic area), we are proposing to use the single national average or median salary amount for each specialty, rather than consider geographic variations, because we would like to simplify and streamline the proposed methodology for determining the GME costs in nonhospital sites as much as possible. We are specifically soliciting comments about whether AMGA's salary information should be used, and if not, which other physician compensation survey (or possible mix of surveys) would be more appropriate for this purpose, and whether we should consider additional factors such as geographic variation in physician salaries within each specialty. We note that we believe it is important for the organization providing specialty-specific physician compensation information for this purpose to be one that is nationally recognized as an authoritative source. Additionally, we believe the data should contain compensation amounts for the fullest range possible of specialties and subspecialties, and should be issued annually so that hospitals will always have the most current data to use in determining the teaching physician costs in nonhospital sites. In addition, we would prefer a survey that is available to the public at no cost. (We understand that a number of these surveys are proprietary.) We are also soliciting comments as to how to make the survey data available in the most efficient possible manner.

Regardless of the survey source that we ultimately use, we are proposing that hospitals would use the most recent survey data available as of the beginning of the hospital's particular cost reporting year. For example—

- If residents are rotating to a particular nonhospital site to receive training in family practice in a hospital's cost reporting year beginning January 1, 2008, then the hospital would use the family practice average salary from the most recently issued survey (in the case of AMGA, 2007) as the salary cost of that teaching physician, even though that teaching physician may in fact earn more or less than that national average salary amount.
- If the teaching physician is a neurologist providing residents with neurology training in a nonhospital site in a hospital's cost reporting year beginning July 1, 2007, then the hospital would use the neurology average salary from most recently issued survey (in the case of AMGA, 2006, since AMGA's surveys are typically released in August) as the salary cost of that teaching physician.

Determining Teaching Physicians' Cost

In determining the teaching physicians' cost, the specialty of the teaching physician is the relevant criterion, not the specialty of the residents that the teaching physician is training in the nonhospital site. Generally, we believe the specialty of the teaching physician will be self-evident, and the hospital can easily locate the national average salary information for that teaching physician's specialty on the survey (for example, if family practice residents are rotating to a dermatology practice to receive training in dermatology, then the national average salary for dermatologists would be used from the survey). However, it is possible that the teaching physician is highly specialized and the average compensation for his or her subspecialty is not listed in the survey we decide to use. In such a case, we are proposing that the hospital should use the immediately less-specialized form of that specialty applicable to that teaching physician (or the hospital may use the physician's actual salary information). For example, if residents are receiving training from a forensic pathologist, and the national average salary for the subspecialty of forensic pathology is not included in the physician compensation survey, then we are proposing that the hospital should instead use the national average salary for the specialty of pathology to determine the cost of that teaching physician. We believe this is the simplest method of assigning a national average physician compensation amount in the instance where the teaching physician's actual subspecialty is not included in the survey. However, we are soliciting comments as to whether it is possible or appropriate to use survey data from other sources in the event that data is not available from the particular survey source.

In addition, although it may not be a common occurrence, it is possible that residents could be receiving training in a nonhospital site from a teaching physician that is board certified in more than one specialty, but the residents are only receiving training in one of the specialties in which the physician is board certified. In this case, we are proposing that the national average salary that should be used to determine the teaching physician's cost should be the one for the specialty in which the teaching physician is training the residents. For example, if residents are being supervised by a cardiologist who is board certified in internal medicine and cardiology, but the residents are training with him or her specifically to learn internal medicine, then we are proposing that the hospital should use the national average salary for internal medicine, and not cardiology, to determine the teaching cost of that physician. That is, in instances where the residents are receiving training at a nonhospital site from a teaching physician that is board certified in more than one specialty, and it is unclear which specialty to use for purposes of assigning a national average salary to that physician, we are proposing that the question for the hospital to ask is, why are the residents training with that physician? If the answer is, ''to receive

training in Specialty X,'' then the national average salary amount for Specialty X should be used to determine the teaching physician's cost. If the answer is, ''to receive training in Specialty Y,'' then the national average salary amount for Specialty Y should be used to determine the teaching physician's cost, regardless of the specific board certification that the teaching physician has actually received. In general, the hospital, with assistance from the GME Program Director as necessary, should be able to document for the Medicare contractor the specialty in which the residents are receiving training at the nonhospital site, and the national average physician compensation amount for that specialty used in paying ''all or substantially all'' of the costs, as defined in this proposed rule.

Multiple Teaching Physicians and Residents: 1:1 Resident to Teaching Physician Ratio

We understand that it is not unusual for several residents in the same program to rotate to a particular nonhospital site at the same time, and be supervised by one teaching physician, or for residents to be supervised by several teaching physicians during their time at that nonhospital site. In determining the total costs of the training program at the nonhospital site, it is necessary to consider all of the residents' salaries and fringe benefits (including travel and lodging where applicable), and the teaching physicians' national average salaries. However, to maintain administrative simplicity, we are proposing to allow hospitals to apply a maximum of a 1:1 resident-to-teaching physician ratio ''limit'' in determining the total GME costs applicable to a program at a nonhospital site. For example, if at the nonhospital site there are two teaching physicians and one FTE resident, the hospital may determine 90 percent of the total costs of the program using a 1:1 resident-to-teaching physician ratio, not a 1:2 resident-to-teaching physician ratio. The 90 percent threshold would be based on the total cost of the one FTE resident (salary and fringe benefits, and travel and lodging where applicable) and one teaching physician (national average salary for the specialty multiplied by the percentage of time spent in nonpatient care GME activities). Similarly, if a hospital rotated 3 FTE residents in the same program to a particular nonhospital site with 7 physicians, unless the hospital documents otherwise, we would assume that all 7 physicians supervise the residents at some point during the training, but, for purposes of determining the 90 percent threshold, we propose to assume that there are only 3 FTE residents being supervised by 3 teaching physicians. Accordingly, the 90 percent threshold would be based on the total cost of the 3 FTE residents' salaries and fringe benefits (including travel and lodging where applicable) and 3 teaching physicians (national average salaries for the specialties multiplied by the percentage of time spent in nonpatient care GME activities). (In addition, we note that the 1:1 limit may be applied to FTE fractions, as well. That is, if in the preceding example, 3.5 FTE residents were being supervised by 7 physicians, the 90 percent threshold would be determined based on the costs associated with a resident-to-teaching physician ratio of 3.5:3.5.)

In the case of multiple teaching physicians, we must also consider that a particular nonhospital site may be staffed by physicians in different specialties. For example, an orthopedics practice may include orthopedists and radiologists. In this case, we would still maintain the 1:1 resident-to-teaching physician limit, even if the teaching physicians are in different specialties, unless the hospital can document that the number of physicians actually teaching the residents is less than the number of FTE residents training at that nonhospital site. Once the number of teaching physicians is established, we are proposing that the hospital would determine the national average salary for each of those teaching physicians from the national survey data, and then calculate the average national salary of the mix of physician specialties in the practice to be used in computing the 90 percent threshold. For example, assume that 3 FTE residents are rotating to an orthopedic surgery practice staffed by a total of 7 physicians; 4 are orthopedic surgeons, and 3 are diagnostic radiologists. Again, unless the hospital documents otherwise, we would assume that all 7 physicians supervise the residents at some point during their rotation to this practice. First, the hospital would access the national average salary for orthopedic surgeons (assume $400,000), and the national average salaries for diagnostic radiologists (assume $412,000). Then, the hospital would calculate the average salary for these physicians as follows: $[(\$400{,}000 \times 4) + (\$412{,}000 \times 3)]/7 = \$405{,}143$. Next, the 1:1 resident-to-teaching physician ratio would be applied, such that for purposes of determining the 90 percent threshold, there would be 3 FTE residents and 3 teaching physicians. Since the 3 teaching physicians are not in the same specialty, the hospital would multiply the average salary cost of $405,143 by 3 to get the total teaching physician salaries for the training program at that site ($\$405{,}143 \times 3 = \$1{,}215{,}429$). The hospital would then multiply $1,215,429 by the percentage of time spent by the teaching physicians in nonpatient care GME activities (that percentage is 3 hours divided by the number of hours the practice is open during a week) to determine the teaching physician GME cost for the training program at that site. This teaching physician cost is then added to the salaries and fringe benefits (including travel and lodging where applicable) of the 3 FTE residents to determine the GME cost of the program at that practice, and the hospital must ensure that it incurs at least 90 percent of that GME cost to count the 3 FTE residents training at the nonhospital site.

We note that, as we indicated above in this section, if there are several physicians in a nonhospital site, we would assume that they all supervise the residents at some point during the residents' training. However, it may be that in fact only some of the physicians actually supervise the residents, while other physicians are not involved in the training program at all. The hospital may wish to document that only certain physicians are involved in the training program (in order to more accurately represent the structure and costs of the training program in a particular nonhospital site). Such documentation would increase the number of residents relative to teaching physicians that is used to calculate the teaching physician costs. That is, using the example above where the resident-to-teaching physician limit was presumed to be 3:3, since there were actually 3 FTE residents and 7 physicians, if the hospital can document that only 2 physicians supervised the residents (and the other 5 physicians were not involved in the GME program at all), then the resident-to-teaching physician ratio would be 3:2. As a result, the hospital might be required to incur less teaching physician costs, if any, to meet the 90 percent threshold.

(2) Residents' Salaries and Fringe Benefits

The second variable in our proposed methodology for determining the costs of a program at a nonhospital site is the salaries and fringe benefits (including travel and lodging where applicable) of the FTE residents that are rotating to a particular nonhospital site. We understand that since the salaries and

fringe benefits (including travel and lodging where applicable) of most residents are already paid by hospitals (either directly, or by reimbursing another entity such as a medical school), the portion of the actual cost of the residents attributable to training in the nonhospital setting can be easily identified and documented by a hospital. Therefore, as under existing regulations, in determining the 90 percent threshold for a particular program at a specific nonhospital site, the hospital must use the actual cost of each FTE resident's salary and fringe benefits (including travel and lodging where applicable). In addition, the cost of the residents will vary by specialty and by program year. Furthermore, as with current policy, the total residents' costs will be based on the FTE number rotating to a particular nonhospital site in a cost reporting period, not the number of individuals actually training in a nonhospital site.

(3) The Number of Hours Spent in Nonpatient Care GME Activities in a Week and the Number of Hours That the Nonhospital Site Is Open in a Week

The third variable used in the determination of the costs of a training program at a nonhospital site is the amount of time that the teaching physician(s) spends on direct GME (nonpatient care) activities in a week. As we first explained in the July 31, 1998 **Federal Register** (63 FR 40987), and more recently in the August 8, 2005 Qs&As posted on the CMS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/Downloads/nonhospQA.pdf,* determination of the teaching physician costs to the nonhospital site is dependent upon the teaching physician's salary and the percentage of time he or she devotes to activities related to non-billable GME activities at the nonhospital site (such as conferences, practice management, lectures, and administrative activities like resident evaluations). Hospitals and teaching physicians have protested that documenting the percentage of time that teaching physicians spend on activities relating to nonpatient care GME activities at the nonhospital site is an onerous and impractical task. In an effort to eliminate the documentation burden on physicians of keeping track of the amount of time they spend in nonpatient care GME activities in the nonhospital site, rather than require teaching physicians to estimate the number of hours per week that they spend in such activities with or on behalf of the residents, we are proposing an alternative option that hospitals may choose to use to determine the percentage of the teaching physician's time that is spent in nonpatient care GME activities. This option is an administrative shortcut or a proxy that we are proposing, rather than continuing to require in all cases that the hospital must document and pay for the actual costs of a training program at a nonhospital site. However, a hospital always has the option of documenting and paying for at least 90 percent of the costs of a program at a nonhospital site using the teaching physician's actual salary and information on the time spent in nonpatient care GME activities.

Under the proposed proxy methodology, we would apply a presumed standard number of hours spent by teaching physicians in nonpatient care GME activities in every nonhospital site. Specifically, we are proposing to use a standard of 3 hours per week spent in nonpatient care GME activities by teaching physicians. We propose that the 3 hour standard would be used in all cases in the formula for determining the teaching physician costs at *all* nonhospital sites, regardless of the specialty of the residents or the number of teaching physicians or residents training at that nonhospital site. Although some hospital industry representatives have stated that the amount of time spent by teaching physicians in nonpatient care GME activities in nonhospital sites is ''de minimus,'' and, therefore, there is typically little if any teaching cost to the nonhospital site, we believe there is also evidence indicating that in many cases the teaching physician is spending a significant amount of time with or on behalf of the residents in nonpatient care GME activities. We believe the standard of 3 hours of nonpatient care GME activities per week is a reasonable proxy based on data collected from surveys conducted by the Association of American Medical Colleges (AAMC), the American Osteopathic Association (AOA), and the Academic Family Medicine Advocacy Alliance (AFMAA), in addition to information compiled from our own informal surveys of teaching physicians.

In September 2005, in response to a request by CMS, the AFMAA, AOA, and AAMC conducted informal surveys to determine the amount of time spent in nonpatient care activities by teaching physicians in nonhospital sites. In the survey results shared with CMS by these associations, we received a range of hours for the amount of teaching physician time spent per week in nonpatient care GME activities at the nonhospital site. Such nonpatient care GME time included time spent by the teaching physician in training activities when the patient was not present and time spent in administrative activities related to the GME program. The surveys showed means ranging from 1.1 to 4.0 hours per week and medians of 1.5 to 4.0 hours per week for time spent on residency training when patients were not present. The surveys also showed means ranging from 1.6 to 4.7 hours per week and medians of 0 to 2 hours per week for time spent on administrative activities related to residency training at the nonhospital site. Given the range of survey results, we believe that 3 hours per week serves as a reasonable number to use as a shortcut or a proxy for determining teaching physician time spent in nonpatient care GME activities at the nonhospital site. As previously stated, hospitals always still have the option of calculating teaching physician costs and the 90 percent cost threshold using actual data (as under current regulations) specific to the number of hours the teaching physician spends per week on GME activities at the nonhospital site. For example, if a hospital can document that a teaching physician actually spends 1.5 hours per week on GME activities at the nonhospital site, then the hospital may use 1.5 hours per week in calculating the teaching physician cost and the 90 percent cost threshold.

We are proposing to use the standard of 3 hours of nonpatient care activities per week as the proxy regardless of the number of FTE residents the teaching physician is supervising because we believe that when the number of FTE residents at a nonhospital site increases, the teaching physician time associated with those FTE residents in many instances will increase by only a small multiple. For example, a teaching physician would provide a lecture to the residents together, rather than separately lecturing each FTE resident training at the nonhospital site. Accordingly, the time spent by the teaching physician in nonpatient care activities may increase only slightly with each additional FTE resident being supervised.

While we are proposing to use the standard number of hours spent by teaching physician(s) in nonpatient care direct GME activities across all training occurring at all nonhospital sites (that is, 3 hours per week), we are proposing to introduce a fourth variable in the determination of the cost of a training program in a nonhospital site that will vary depending on the specific nonhospital site. This fourth variable is the number of hours that a nonhospital site is open each week. Since only a percentage of the teaching physician's

salary is attributable to direct GME activities, and that percentage is based on time he or she devotes to activities related to non-billable GME activities at the nonhospital site, we are proposing to determine this percentage by dividing the standard number of hours spent in nonpatient care GME activities by the number of hours the *specific* nonhospital site is open each week. We are proposing that the numerator will always be 3 hours, and the denominator will vary depending on the nonhospital site. For example, if FTE residents rotate throughout the year to a nonhospital site that is open 40 hours per week, then the percentage of time spent by the teaching physician(s) in nonpatient care GME activities throughout the year at that site is 3/40 = 0.075 or 7.5 percent. (If FTE residents rotate to that nonhospital site for only a portion of a year, then the ratio of 3/40 would be further multiplied by the percentage of the year that the FTE residents train there. For example, if the FTE residents only rotate to this nonhospital site for 3 months of the year, then the percentage of time that the teaching physician(s) spends on nonpatient care GME activities at that site equals ($3/40 \times 0.25 = 0.019$ or 1.9 percent). Similarly, if FTE residents rotate throughout the year to a nonhospital site that is open 50 hours per week, then the percentage of time spent by the teaching physician(s) in nonpatient care direct GME activities throughout the year is 3/50 = 0.06 or 6 percent. We recognize that the teaching physician(s) may not spend 100 percent of his or her time in that nonhospital site. In fact, many teaching physicians spend some of their week working in a hospital or other facilities. However, we believe that deriving the true amount of time spent by each teaching physician in each nonhospital site in nonpatient care GME activities would involve the imposition of another form of the documentation burden that the hospital industry and teaching physicians have found onerous up to this point. This proposed methodology eliminates the need for any time studies and it is easy to gather the information needed.

We also acknowledge that this proposal to use the number of hours that a particular nonhospital site is open as a proxy in the denominator for determining the percentage of time spent by the teaching physician(s) in nonpatient care GME activities could, in some extreme instances, result in an unusually high percentage of teaching time, which, in turn, would result in a determination of unusually high teaching costs. This is so because, since 3 hours is a constant in the numerator, the fewer the number of hours the clinic is open (the denominator), the greater the calculated percentage of time spent by the teaching physician in nonpatient care GME activities. To use an extreme example, if a clinic is only open 10 hours a week, then 3/10, or 30 percent of the national average salary for the teaching physician's specialty would represent the teaching physician's cost that would be used to determine 90 percent of the costs of the program at the clinic. However, we believe that, for most nonhospital training situations, this proposal to use the 3 hour standard and the number of hours the nonhospital site is open per week is a reasonable alternative to the current procedures for determining the actual teaching physician's cost because these proxies are easily obtainable, discrete numbers that do not necessitate any time studies. Nevertheless, we are soliciting comments on alternative proxies that might be appropriate to use in the place of the ratio of 3 hours to the number of hours a nonhospital site is open per week. We also note that in the event that this proposed methodology for calculating teaching physician costs in a particular nonhospital site results in an unrealistic amount, we reiterate that a hospital always has the option of determining and paying at least 90 percent of the GME costs using actual physician salary and teaching time information, for all, or some of its training programs occurring in nonhospital settings. In fact, we are proposing that a hospital may choose to use a combination of actual information and proxy information for determining the teaching physician cost. For example, a hospital may choose to use actual physician salary information instead of the national average survey data, but use the 3 hour standard and the number of hours the nonhospital site is open per week to determine the percentage of time spent on teaching activities, or vice versa. Furthermore, we reiterate that under the proposed new definition of ''all or substantially all,'' even if a hospital chooses to document the teaching physician cost using actual teaching physician-specific information, the hospital need only incur 90 percent of the residents' salaries and fringe benefits (including travel and lodging where applicable), and the portion of the teaching physicians' salaries attributable to direct GME, and *not* 100 percent of those costs.

Under our proposal, 90 percent of the GME costs for a particular program at a particular nonhospital site would be the minimum amount that a hospital must pay to count the FTE resident(s) training at that site for direct GME and IME purposes. If the hospital is already paying the resident's salaries and fringe benefits (including travel and lodging where applicable), and if the costs of the resident's salaries and fringe benefits are equal to at least 90 percent of the total GME costs at the nonhospital site (that is, the 90 percent threshold), then the hospital is paying ''all or substantially all'' of the costs in accordance with our proposed definition, and need not pay an additional amount for teaching physician compensation in order to count the FTE residents. However, if the hospital is paying less than 90 percent of the costs of the training program at the nonhospital site, then the hospital must pay an additional amount toward the teaching physician costs until it is paying at least 90 percent of the GME costs for that program. We believe our proposal is relatively simple, easy to administer, and eliminates the documentation burdens cited by the industry as being associated with the current policy. However, we note again that even under our proposal, a hospital is not precluded from choosing to calculate and pay 90 percent of the teaching costs of a program in a nonhospital site in accordance with the existing policy requirements. That is, the hospital may still choose to document the actual teaching physician cost using actual time and salary information from the teaching physician(s) to determine what the true direct GME costs are at that nonhospital site. Once the hospital calculates the actual direct GME costs, we propose that it would only be required to pay at least 90 percent of the actual direct GME costs, consistent with our proposed definition of ''all or substantially all of the costs for the training program in the nonhospital setting.''

The following is an additional example of the application of the proposed methodology:

Example: For the July 2008 through June 2009 academic year, a hospital with a family practice program sends 3 FTE residents (in different program years) to train at the Family Medicine Center (FMC), a nonhospital site. The hospital's cost reporting period began on January 1, 2008. The FMC is staffed by 5 physicians, all of whom supervise the residents at some point during the year. Four of the physicians are family practitioners, and 1 physician is a psychiatrist. The FMC is open for 50 hours per week. To determine the cost of the teaching physicians, the hospital refers to the most recent national average salary amounts on the national survey published prior to January 1, 2008, which is the 2007 survey. Assume that the national average published salary amount for family practice is $180,000, and the national

average published salary amount for psychiatry is $187,000. Since there are multiple physicians in different specialties (absent specific documentation provided by the hospital), the average salary of one FMC physician is calculated as follows: *[($180,000 × 4 family practice physicians) + ($187,000 × 1 psychiatrist)]/5 = $181,400.* Since the residents are on the payroll of the hospital, the hospital knows that the total actual cost of the 3 FTE residents' salaries and fringe benefits (including travel and lodging, if applicable) is $182,000. After applying the 1:1 resident-to-teaching physician limit, there are 3 FTE residents to 3 teaching physicians (again, absent specific documentation provided by the hospital). Thus, the GME cost of the 3 teaching physicians is calculated as follows: *($181,400 × 3) × (3 hours/50 hours) = $32,652.* This teaching physicians' cost of $32,652 is added to the residents' cost of $182,000 to arrive at the total cost of the training program at the nonhospital site of $214,652. To meet the proposed definition of ''all or substantially all,'' the hospital would be required to pay at least 90 percent of the costs of the training program at the nonhospital site, which in this example equals $193,187 (that is, 0.90 × $214,652). Since in this case the cost of the 3 FTE residents' salaries and fringe benefits is $182,000, the hospital would not reach the 90 percent cost threshold by simply incurring the costs associated with the residents. The hospital must pay at least an additional $11,187 (that is, $193,187 − $182,000) to meet the 90 percent threshold and satisfy the requirement to pay ''all or substantially all'' of the costs of the family practice program at the FMC.

C. Other Issues To Be Considered

Although we are proposing a revised standard for a hospital to incur ''all or substantially all of the costs for the training program in the nonhospital setting'' in order to count FTE residents training in nonhospital sites, the other existing regulations regarding nonhospital sites would still generally apply, but would require some modification. Under the existing regulations at § 413.78(e), a hospital is permitted to count residents training in nonhospital sites only if the residents spend their time in patient care activities, and the hospital must comply with either of the following: (a) It must pay all or substantially all of the costs of the training program in the nonhospital site by the end of the third month following the month in which the training in the nonhospital site occurred; or (b) it must have a written agreement with the nonhospital site that states that the hospital will incur the cost of the resident's salary and fringe benefits while the resident is training in the nonhospital site and the hospital is providing reasonable compensation to the nonhospital site for supervisory teaching activities. The written agreement must indicate the compensation the hospital is providing to the nonhospital site for supervisory teaching activities. We are proposing to add a new § 413.78(f) for cost reporting periods beginning on or after July 1, 2007, to reflect the revised definition of ''all or substantially all of the costs for the training program in the nonhospital setting.'' First, if a hospital chooses to make concurrent payments; that is, pay the training costs by the end of the third month following the month in which the training occurred, then we propose that the hospital must be able to document for audit purposes that the concurrent payments it makes reflects ''all or substantially all'' of the costs, in accordance with the new proposed definition at § 413.75(b).

Alternatively, if the hospital chooses to maintain a written agreement with the nonhospital site (which, we note, must be in place before the hospital may begin to count residents training at a nonhospital site), we are proposing that the new § 413.78(f) would state that the written agreement must indicate that the hospital will incur at least 90 percent of the total of the costs of the resident's salary and fringe benefits (including travel and lodging where applicable) while the resident is training in the nonhospital site and the portion of the cost of the teaching physician's salary attributable to direct GME. We are proposing that the written agreement should specify the total compensation amount the hospital will incur to the nonhospital site to meet the 90 percent ''all or substantially all'' threshold, and whether this amount reflects only residents' salaries and fringe benefits (including travel and lodging where applicable), or reflects an amount for teaching physician compensation as well. We believe the written agreement should specify the total amount of nonhospital site training costs the hospital will incur and specify what costs are included in that amount because the hospital would need to determine up front the amount it must pay to the nonhospital site in order to meet the 90 percent threshold and incur ''all or substantially all'' of the cost in accordance with our proposed definition. In addition, the provision of this information in the written agreement will simplify the audit process when the Medicare contractor determines whether the amount paid by the hospital to the nonhospital site reflects ''all or substantially all'' of the costs of the program in the nonhospital site in accordance with the new proposed definition at § 413.75(b). We note that regardless of whether a hospital chooses to make concurrent payments to the nonhospital site, or to have a written agreement, the hospital must demonstrate that it is paying for at least 90 percent of the costs of each program at each nonhospital site according to the following formula (although actual data may be used in place of the proxies):

0.90 × [(sum of each FTE resident's salary + fringe benefits (including travel and lodging where applicable)) plus the portion of the teaching physician's compensation attributable to direct GME activities].

The portion of the teaching physician's compensation attributable to direct GME activities may be calculated as follows:

(3/number of hours nonhospital site is open per week) × (national average salary for each teaching physician).

If there are no teaching costs (because, for example, the residents are rotating to a nonhospital site where the teaching physician is a solo practitioner), then the written agreement should indicate that the specified compensation amount reflects only residents' salaries and fringe benefits (including travel and lodging where applicable) because there are no teaching physician costs (since the teaching physician is a solo practitioner). Finally, we note that, as under existing regulations, if the hospital does choose to have a written agreement with the nonhospital site, the hospital must, at a minimum, liquidate the costs identified in the written agreement in accordance with the regulations at § 413.100(c)(2)(i).

In addition, we note that under current policy, a hospital may choose to provide non-monetary, in-kind compensation rather than provide direct financial compensation to the nonhospital site for supervisory teaching activities. Under the new proposed definition of ''all or substantially all,'' a hospital would still be permitted to provide in-kind compensation to the nonhospital site, but, as under current policy, the hospital must be able to document that the value of the in-kind compensation is at least equivalent monetarily to the portion of the actual or proxy-based costs for that physician attributable to nonpatient care GME activities. That is, the hospital must show that the value of in-kind compensation is sufficient to meet the 90 percent threshold using the formula stated above in this section.

We also believe it is important to review how the written agreement requirements apply when a hospital's residents rotate to nonhospital sites such as clinics owned by a medical

school. As we stated in response to Question 9 on the Qs&As on our Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/Downloads/nonhospQA.pdf,* ''rather than having a written agreement with each clinic, it would be appropriate for the hospital to have a written agreement with the medical school, since the medical school owns the clinics. If the residents are training in various medical school clinics, *the hospital must have written agreement(s) reflecting the compensation arrangements for each clinic''* (emphasis added). Unfortunately, we have learned of numerous situations where a hospital has a single agreement with the medical school in which the hospital specifies a lump sum dollar amount that it is paying the medical school for GME-related services that the medical school is providing, but there is no breakout at all as to the specific training costs attributable to individual clinics, or to the specific programs at those clinics. Without a breakout of the residents' salaries and fringe benefits (including travel and lodging where applicable), and the portion of the teaching physicians' salaries attributable to nonpatient care GME activities at each nonhospital site, the Medicare contractor is unable to determine whether the hospital has properly paid the costs of each specialty program at each nonhospital site in accordance with the statutory and regulatory requirements. Likewise, under the new proposed definition of ''all or substantially all,'' whether hospitals pay for the costs of a program at a nonhospital site on a concurrent basis, or if they have a written agreement, they must be able to document how they are paying for ''all or substantially all'' of the costs of a particular program at each nonhospital site. Global agreements with lump sum payment amounts, either for teaching physician costs or for nonhospital training in general, have not been sufficient under existing policy and would not be sufficient under the proposed policy. Similarly, as under current policy, if two (or more) hospitals both train residents in the same accredited program, and the residents rotate to the same nonhospital site(s), the hospitals cannot share the costs of that program at that nonhospital site (for example, by dividing the FTE residents they wish to count according to some pre-determined methodology), as this violates the statutory requirement at section 1886(h)(4)(E) of the Act that the hospital incur ''*all, or substantially all, of the costs for the training program in that setting*'' (emphasis added). Finally, as under current policy, we note that in the instance where a hospital is sending residents in several different specialty programs to train in the same nonhospital site, and it wishes to count all of those FTE residents for purposes of IME and direct GME payment, the hospital must be able to document that it is separately meeting the ''all or substantially all'' threshold for each specialty program at that site. (That is, the hospital would determine the 90 percent threshold in accordance with the proposed methodology described above separately for multiple teaching physicians and residents, and would apply the resident-to-teaching physician ratio limit if applicable).

In summary, we are proposing to revise § 413.75(b) to modify the definition of ''all or substantially all of the costs for the training program in the nonhospital setting'' to reflect the policies in place between January 1, 1999 and July 1, 2007, and our proposed policy on or after July 1, 2007. We are revising the definition of ''all or substantially all of the costs for the training program in the nonhospital setting'' to mean: (a) Effective on or after January 1, 1999 and for cost reporting periods beginning before July 1, 2007, the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education (GME); and (b) effective for cost reporting periods beginning on or after July 1, 2007, at least 90 percent of the total of the costs of the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries attributable to direct GME.

In addition, we are proposing to revise § 412.105(f)(1)(ii)(C) for IME and add a new § 413.78(f) to reflect the revised requirement to pay ''all or substantially all'' of the GME costs in a nonhospital site, effective for cost reporting periods beginning on or after July 1, 2007.

XIII. Technical Amendment

In the Revisions to Hospital Inpatient Prospective Payment Systems—FY 2007 final rule (71 FR 47870 through 48136), in an amendatory instruction to § 412.22(h)(3), we inadvertently omitted the words ''introductory text.'' Therefore, paragraphs § 412.22(h)(3)(i) and (ii) were removed. We are proposing to replace § 412.22(h)(3)(i) and (ii) in this proposed rule.

XIV. Waiver of Proposed Rulemaking and Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule in accordance with 5 U.S.C. section 553(b) of the Administrative Procedure Act (APA). The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

In addition, we ordinarily provide a 30-day delay in the effective date of the provisions of a proposed rule. Section 553(d) of the APA (5 U.S.C. section 553(d)) ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the finding and its reasons in the rule issued.

In the Revisions to Hospital Inpatient Prospective Payment Systems—FY 2007 Occupational Mix Adjustment to Wage Index; Implementation; Final rule (71 FR 47870 through 48136), in an amendatory instruction to § 412.22(h)(3), we inadvertently omitted the words ''introductory text.'' Therefore, paragraphs § 412.22(h)(3)(i) and (ii) were removed from the CFR. We believe that since we are merely making a technical correction by correcting an amendatory instruction and since these paragraphs were subject to notice and comment when originally added to the CFR, we have just cause to waive additional notice and comment rulemaking at this time. Also, it is in the public interest to have these paragraphs reinstated immediately because the entities to which these provisions apply may believe they will no longer be excluded from the IPPS and may be in the process of closing their facilities including transferring patients to other facilities. In addition, it is in the public interest to have these paragraphs reinstated immediately because they are part of current policy. The paragraphs are being added without any changes to the language or its intent. For these same reasons, we believe that we have

just cause to waive the 30-day delay in effective date since we are correcting an error from the previously published rule and not implementing new policy.

For the reasons stated above in this section, we find that both notice and comment and the 30-day delay in effective date for this correction are unnecessary and impracticable, and that it is in the public interest to make this notice effective in conjunction with the final rule to which the corrections apply (and could be contrary to the public interest to do otherwise). The technical correction is effective as if it had been included in the Revisions to Hospital Inpatient Prospective Payment Systems—FY 2007 Occupational Mix Adjustment to Wage Index; Implementation; Final rule.

XV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 413.78 Direct GME Payments: Determination of the Total Number of FTE Residents

Section 413.78(f) outlines the requirements that must be met for the time residents spend in non-provider settings to be included in determining the number of FTE residents used in the computation of a hospital's resident count. A resident must spend his or her time in patient care activities; the hospital must incur substantially all of the costs of the training program in a nonhospital setting.

In addition, § 413.78(f)(3) requires that a hospital comply with one of the two requirements listed in § 413.78(f)(3)(i) and § 413.78(f)(3)(ii).

Section 413.78(f)(3)(i) states that a hospital must document that it is paying for all or substantially all of the costs associated with the training program in nonhospital settings. The costs must be incurred between the training date and the end of the third month after the training date. The burden associated with this requirement is the time and effort associated with documenting and maintaining records of the incurred costs and subsequent payments made by a hospital.

Section 413.78(f)(3)(ii) states that a hospital must have a written agreement with the nonhospital site. The agreement must state that the hospital will incur at least 90 percent of the cost of the resident's salary and fringe benefits (and travel and lodging where applicable) while the resident is training in the nonhospital site and the portion of the cost of the teaching physician's salary is attributable to GME. The written agreement must also specify the compensation amount the hospital is paying the nonhospital site, and whether this amount reflects only residents' salaries and fringe benefits (and travel and lodging is applicable), or includes an amount for teaching physician compensation. The burden associated with this requirement is the time and effort associated with drafting, signing, and maintaining the written agreement.

The requirements listed in § 413.78(f)(3)(i) and § 413.78(f)(3)(ii) are exempt from the Paperwork Reduction Act of 1995 in accordance with Pub. L. 99–272.

We will be submitting a copy of this proposed rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, *Attn:* William N. Parham, III, [CMS–1529–P], Room C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, [CMS–1529–P], *carolyn_lovett@omb.eop.gov*. Fax (202) 395–6974.

XVI. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption ''IMPACT'' at the beginning of your comments.]

A. Introduction

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). We are using the proposed rates, factors and policies presented in this proposed rule, including updated proposed wage index values, and the best available claims and CCR data to estimate the change in proposed payments for the 2008 LTCH PPS rate year. Based on the best available data for 369 LTCHs, we estimate that the proposed expansion of the existing payment provision for co-located LTCHs (HwHs and satellites of LTCHs) at existing § 412.534 to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs (as discussed in section V.B. of the preamble of this proposed rule), in conjunction with the proposed update to the Federal rate for RY 2008 (discussed in section IV.C. of the preamble of this proposed rule), the proposed changes to the area wage adjustment (discussed in section IV.D.1. of the preamble of this proposed rule), and the proposed increase in the outlier fixed-loss amount (discussed in section IV.D.3.c. of the preamble of this proposed rule) for the 2008 LTCH PPS rate year, would result in a decrease in estimated payments from the 2007 LTCH PPS rate year of approximately $80 million (or about 2.0 percent) for the 369 LTCHs in our database.

Regarding the approach discussed for addressing our concerns with the existing SSO policy presented in section V.A.2. of the preamble of this proposed rule, we estimate that such an approach would result in a decrease in estimated payments in the 2008 LTCH PPS rate year of about an additional $37 million (for a total decrease in estimated aggregate payments of $117 million ($80 million plus $37 million) or about 2.9 percent) for the 369 LTCHs in our database. (An estimate of Medicare program payments for LTCH services for the next 5 years is shown in section IV.D.5. of the preamble of this proposed rule. The impact of the proposed policy change relating to payment for Hospital Direct and Indirect Graduate Medical Education Payments (GME) is discussed in section XVI.C.2. of this regulatory impact analysis.) The estimated impact of the provisions presented in this proposed rule (as detailed above) for the 369 LTCHs in our database are in Table 8.

TABLE 8.—ESTIMATED IMPACT OF THE PROVISIONS OF THIS PROPOSED RULE [1]

Proposed policy	Estimated percent change in estimated aggregate LTCH PPS payments
Proposed Payment Rate and Policy Changes:	
Proposed Changes to the Federal Rate [2]	0.61
Proposed Changes to the Area Wage Adjustment	−0.49
Approach Discussed for SSO Policy	−0.91
Subtotal [3]	−0.7
Expansion of the "25 Percent" Policy [4]	−2.2
Total [5] (−0.7% + −2.2%)	−2.9

[1] Percent change in estimated aggregate LTCH PPS payments from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year based on the best available data for 369 LTCHs.

[2] As discussed in greater detail in section XV.B.4. of this regulatory impact analysis, because about 35 percent of all LTCH cases are projected to receive a payment under the existing SSO policy that is based either on the estimated cost of the case or the "IPPS comparable amount" (rather than the proposed Federal rate). Therefore, the percent change in estimated aggregate LTCH PPS payments due to the proposed changes to the Federal rate, 0.61 percent, is slightly less than the proposed update to the Federal rate of 0.71 percent.

[3] In absence of including the approach considered for the SSO policy (discussed in section V.A.2. of this proposed rule), we estimate that in place of the 0.7 percent decrease in estimated aggregate LTCH PPS payments, on average, for all LTCHs, there would be 0.25 percent increase in estimated aggregate LTCH PPS payments, on average, for all LTCHs for all proposed payment rate and policy changes. We also note that the estimated percent change for all proposed payment rate and policy changes may not exactly equal the sum of the estimated percent change for the proposed changes to the Federal rate, the proposed changes to the area wage adjustment and the approach discussed for the SSO policy due to the effect of estimated changes in aggregate HCO payments as well as other interactive effects that cannot be isolated.

[4] Proposed expansion of the existing special payment provision for co-located LTCHs (HwHs and satellites of LTCHs) at existing § 412.534 to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs (as discussed in section V.B. of the preamble of this proposed rule).

[5] Total estimated impact of the provisions of this proposed rule (that is, sum of the estimated impact of the proposed payment rate and policy change, including the approach discussed for the SSO policy, and the estimated impact of the expansion of the "25 percent" policy). We note that in absence of including the approach discussed for the SSO policy, we project that the total estimated impact of the provisions of this proposed rule are projected to result in a 2.0 percent decrease in estimated aggregate LTCH PPS payments.

Because the combined distributional effects and estimated changes to the Medicare program payments would be greater than $100 million if we take into consideration the approach discussed for the SSO policy (in section V.A.2. of the preamble of this proposed rule), this proposed rule would be considered a major economic rule, as defined in this section. We note the $117 million (or 2.9 percent) decrease in estimated aggregate LTCH PPS payments resulting from the provisions presented in this proposed rule does not reflect changes in LTCH admissions or case-mix intensity in estimated LTCH PPS payments, which would also affect overall payment changes.

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. For purposes of the RFA, proprietary hospitals are small entities if they meet the small business size standard described above (for further information, see the Small Business Administration's regulation at 65 FR 69432, November 17, 2000). Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary LTCHs. Therefore, we assume that all LTCHs are considered small entities for the purpose of the analysis that follows. Medicare FIs are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

Currently, our database of 369 LTCHs includes the data for 78 non-profit (voluntary ownership control) LTCHs and 246 proprietary LTCHs. Of the remaining 45 LTCHs, 13 LTCHs are Government-owned and operated and the ownership type of the other 32 LTCHs is unknown (as shown in Table 9). The impact of the proposed payment rate and policy changes for the 2008 LTCH PPS rate year (including the proposed update to the Federal rate, proposed changes to the area wage adjustment, and the approach discussed for the SSO policy) is discussed in section XVI.B.4.c. of this regulatory impact analysis. The impact of other proposed policy changes, such as the effects of the proposed expansion of the special payment provisions for LTCHs HwHs and LTCH satellites to certain situations not presently covered by § 412.534 for subclause (I) LTCHs, is discussed in section XVI.C. of this regulatory impact analysis.

As we discuss in detail throughout the preamble of this proposed rule, based on the most recent available LTCH data, we believe that although the

provisions of this proposed rule would result in a decrease in estimated aggregate LTCH PPS payments, we believe the resulting LTCH PPS payment amounts result in appropriate Medicare payments. However, we believe that although appropriate, the provisions of this proposed rule could have a significant impact on some small entities (as defined above in this section). As also discussed in greater detail below in this section, we are unable to determine how significant the impact of some of the provisions of this proposed rule may be on small entities since we expect many LTCHs to adjust their admission practices if some of these provisions are implemented. We note that LTCHS have been adapting their behavior in response to the policy changes we have implemented over the past few years (for example, the annual update to the LTC–DRG relative weights, the ''25 percent policy'' at existing § 412.534, the revision to the SSO payment formula at existing § 412.529(c)(2), and the zero percent update to the RY 2007 Federal rate). Although those policy changes were projected to result in decreases in estimated aggregate LTCH PPS payments, the growth in the number of LTCHs has continued (although at a reduced rate). Based on the most recent available OSCAR data, the number of LTCHs has increased over 10 percent in the past 2 years (from October 1, 2004 and October 1, 2006). Because we acknowledge that many of the affected entities are small entities, the analysis discussed throughout the preamble of this proposed rule, in conjunction with the discussion presented in greater detail below in this section and throughout the remainder of this regulatory impact analysis, constitutes our initial RFA. Therefore, in this proposed rule, we are soliciting comments on our estimates and analysis of the impact of the provisions of this proposed rule on small entities.

The proposed changes presented in this proposed rule, which include the proposed payment rate and policy changes and the proposed expansion of the ''25 percent'' policy (described above in this section), are estimated to result in approximately a 2.0 percent ($80 million) decrease in estimated payments per discharge in the 2008 LTCH PPS rate year, on average, to all LTCHs. As shown Table 8, taking into consideration the approach discussed for the SSO policy in section V.A.2. of the preamble of this proposed rule in addition to the proposed payment rate and policy changes and the proposed expansion of the ''25 percent'' policy (described above in this section), we estimate that the provisions of this proposed rule could result in approximately a 2.9 percent (or $117 million) decrease in estimated payments per discharge in the 2008 LTCH PPS rate year, on average, to all LTCHs. Table 8 shows that the proposed payment rate and policy changes (including the approach discussed for the SSO policy) is projected to result in a 0.7 percent decrease in estimated aggregate LTCH PPS payments, and the proposed expansion of the ''25 percent'' policy is projected to result in a 2.2 percent decrease in estimated aggregate LTCH PPS payments. Thus, the majority of the approximately 2.9 percent decrease in estimated aggregate payments in the 2008 LTCH PPS rate year as compared to the 2007 LTCH PPS rate year would be due to the proposed expansion of the special payment provisions for co-located LTCHs to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs (as discussed in section V.B. of this proposed rule).

As discussed in greater detail in section XVI.C.1. of this regulatory impact analysis, because we believe that this proposed policy would discourage inappropriate patient shifting to LTCHs and would encourage all subclause (I) LTCHs to engage in more appropriate admission policies since, under this proposal no payment adjustment would be made if the patient has reached HCO status at the co-located host (under the proposed revision to § 412.534) or at the referring hospital (under proposed § 412.536) prior to being admitted for additional post-acute care at the LTCH (as discussed in greater detail in section V.B. of this proposed rule). Because we expect that such a proposed policy would reduce the financial incentives that may be present currently for certain situations not presently covered by existing § 412.534 to admit patients prematurely discharged from other hospitals, we believe this proposed policy would result in fewer admissions to LTCHs before a complete course of patient care is provided at the non-co-located referring hospital (under proposed § 412.536) or co-located referring hospital (under the proposed revision to § 412.534). Thus, any change in admission practices as a result of this proposed policy would result in less of a decrease in estimated aggregate LTCH PPS payments than the 2.2 percent (90 million) estimated based on current admission practices. Thus, the projected 2.2 percent (decrease in estimated aggregate LTCH PPS payments resulting from this proposed policy change would only occur if there were no changes in LTCH admission practices. Furthermore, we believe that this proposed policy would result in appropriate Medicare payments since, as noted above, we expect that such a policy would reduce the financial incentives to admit patients prematurely discharged from other hospitals and would encourage all LTCHs to engage in more appropriate admission policies. For these reasons, although we estimate that, if implemented, this proposed policy would result in a decrease in estimated aggregate LTCH PPS payments, we do not believe that such a projected decrease in estimated aggregate LTCH PPS payments, although possibly significant, would adversely affect LTCHs' ability to deliver efficient care to Medicare beneficiaries nor would there be an adverse affect on Medicare beneficiaries' access to care.

The impact analysis of proposed payment rate and policy changes in Table 9 (including the approach discussed for the SSO policy in section V.A.2. of the preamble of this proposed rule) shows that estimated payments per discharge are expected to decrease approximately 0.7 percent, on average, for all LTCHs from the 2007 LTCH PPS rate year as compared to the 2008 LTCH PPS rate year. Although we are proposing a 0.71 percent increase to the Federal rate for RY 2008 (as discussed in section IV.C. of this proposed rule), the projected percent decrease in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year is attributable to the proposed changes to the area wage adjustment (discussed in section IV.D.1. of this proposed rule), in conjunction with the approach discussed for SSO cases in section V.A.2. of this proposed rule, as well as the proposed increase to the HCO fixed-loss amount (as discussed in section IV.D.3.c. of this proposed rule). (As discussed in greater detail in section XVI.B.4., the 2.2 percent decrease in estimated aggregate LTCH PPS payments due to the proposed expansion of the ''25 percent policy'' to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs is not reflected in Table 9. However, as noted above, the impact of that proposed policy is discussed in greater detail in section XVI.C.1. of this regulatory impact analysis.)

As the impact analysis in Table 9 shows, estimated changes to the area wage adjustment from RY 2007 to RY 2008 (resulting from both established policy and proposed changes presented in section IV.D.1. of this proposed rule, as discussed in greater detail below in

this section) contribute to the decrease in estimated aggregate LTCH PPS payments from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year. As discussed in section IV.D.1. of this proposed rule, we are proposing to update the wage index values for RY 2008, in accordance with the progression of the existing 5-year phase-in of the area wage adjustment, based on the most recent available wage data. We believe that proposing to update the LTCH PPS wage index based on the most recent available wage data would ensure that the LTCH PPS wage index adjustment appropriately accounts for and reflects the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. In addition, we are proposing to decrease the labor-related share from 75.665 percent to 75.511 percent under the LTCH PPS for RY 2008 based on the most recent available data on the relative importance of the labor-related share of operating and capital costs of the LTCH PPS market basket (also discussed in section IV.D.1. of this proposed rule). We believe that proposing to revise the labor-related share based on the most recent available data would appropriately identify the portion of the proposed LTCH PPS Federal rate that is adjusted to account for geographic differences in area wage levels by applying the applicable proposed LTCH PPS wage index value. As discussed in greater detail in section IV.D.1. of this proposed rule, we believe that these proposed changes to the LTCH PPS area wage adjustment based on the most recent available wage data and data on the relative importance of the labor-related share of the LTCH PPS market basket, respectively, would result in appropriate and accurate LTCH PPS payments for the resources used by LTCHs in a given area. Such updated data appropriately reflects national differences in area wage levels and identifies the portion of the proposed Federal rate that should be adjusted to account for such differences in area wages.

We also note that, even though we have not proposed to make any changes to the existing 5-year phase-in of the wage index adjustment that was established when the LTCH PPS was implemented (August 30, 2002; 67 FR 56018), the continued progression of this phase-in also contributes to the decrease in estimated aggregate LTCH PPS payments for RY 2008. That is, since under the established phase-in of the wage-index adjustment, LTCHs receive an increasing percentage of the applicable full wage index value (which is less than 1.0 for the majority of LTCHs), we expect that estimated aggregate LTCH PPS payments would decrease from RY 2007 to RY 2008 as a result of the progression of the existing 5-year phase-in of the area wage adjustment. Thus, the majority of the 0.5 percent decrease in estimated payments per discharge, on average, for all LTCHs (see Table 9) is due to the existing 5-year phase-in of the wage index adjustment, and is not due to proposed policy changes presented in this proposed rule. Because the existing 5-year phase-in of the area wage adjustment has been a feature of the LTCH PPS since it was implemented beginning October 1, 2002, and since a large majority (over 70 percent) of LTCHs are located in areas where historically the wage index value is less than 1.0, the decrease in estimated aggregate LTCH PPS payments resulting from this policy should be anticipated by LTCHs, and therefore, already accounted for in their fiscal planning. In addition, we note that, although the portion of the decrease in estimated aggregate LTCH PPS payments that is due to the existing 5-year phase-in of the wage index adjustment is expected, we believe that any change in LTCHs' wage index values under this policy is appropriate since LTCHs will be receiving an increasing percentage of the applicable full wage index value, which, by definition, reflects the relative hospital wage levels for the area in which the LTCH is located as compared to the national average hospital wage level.

Because we cannot determine to what extent LTCHs may have planned for the decrease in estimated aggregate LTCH PPS payments that is due to the existing 5-year phase-in of the area wage adjustment, even though the impact may be significant for some LTCHs, we believe that most LTCHs would not be adversely affected since, as explained above, we believe that the proposed changes to the area wage adjustment (that is, the proposed use of update wage data and the proposed change in the labor-related share), in conjunction with the continued progression of the 5-year phase-in of the area wage adjustment, would result in appropriate LTCH PPS payments in RY 2008. For these reasons, we believe that the decrease in estimated aggregate LTCH PPS payments resulting from proposed changes to the area wage adjustment, although possibly significant for some LTCHs, is appropriate and would not adversely affect LTCHs' ability to deliver efficient care to Medicare beneficiaries nor would there be an adverse affect on Medicare beneficiaries' access to care.

In addition, as also shown in Table 9, the approach for the SSO policy discussed in section V.A.2. of this proposed rule would also contribute to the estimated 0.7 percent decrease in estimated aggregate LTCH PPS payments in RY 2008, on average, for all LTCHs. Under that approach, we believe that the LTCH cases that appear to be ''similar to'' the same type of cases treated in an acute care hospital and paid for under the IPPS, as discussed in greater detail in section V.A.2. of this proposed rule, would receive an appropriately adjusted LTCH PPS payment to treat such cases. We believe that those SSO cases that are ''similar to IPPS cases'' most likely do not receive a full course of an LTCH-level of treatment in such a short period of time since, in general, LTCHs are intended to treat longer stay patients. Although we project a decrease in estimated aggregate LTCH PPS with the approach discussed for the SSO policy in section V.A.2. of this proposed rule, we believe that such an approach would result in appropriate and adequate Medicare payments for the treatment of Medicare beneficiaries with a LOS is ''similar to'' typical IPPS cases.

Furthermore, we believe that, if adopted, the approach to the SSO policy discussed in section V.A.2. of the preamble of this proposed rule would accomplish our stated goal of removing the incentive for LTCHs to admit patients for whom a long-term hospital stay is not necessary, and therefore, for whom the LTCH would not be providing complete treatment. As noted previously, the vast majority of LTCH cases, including SSO cases, are admitted to the LTCH directly from an acute-care hospital, and therefore, many SSO cases may still be in need of acute-level care (as we discuss in greater detail in section V.A.2. of the preamble of this proposed rule). Therefore, we believe that in response to the approach discussed for the SSO policy in section V.A.2. of this proposed rule LTCHs may reduce the number of SSO cases that are ''similar to IPPS cases'' that they admit (and most of those patients would continue to receive treatment at the acute-care hospital). To the extent that LTCHs continue to admit SSO cases that are ''similar to IPPS cases,'' we believe that this approach to the SSO policy would result in an adjusted LTCH PPS payment that is appropriate, as discussed above. For these reasons, although we estimate that the approach to the SSO policy discussed in section V.A.2. of this proposed rule would result in a decrease in estimated

aggregate LTCH PPS payments, we do not believe that such an impact on estimated aggregate LTCH PPS payments, although possibly significant, would adversely affect LTCHs' ability to deliver efficient care to Medicare beneficiaries nor would there be an adverse affect on Medicare beneficiaries' access to care.

For all of the reasons discussed above in this section, although we do not expect an estimated incremental decrease of 2.9 percent (approximately $117 million) in estimated aggregate LTCH PPS payments to have a significant adverse financial impact on LTCHs, nor do we expect there would be an effect on beneficiaries' access to care, we acknowledge that the provisions of this proposed rule could have a significant impact on some small entities. However, we believe that the provisions of this proposed rule would result in appropriate LTCH PPS payments in RY 2008. We also note that LTCHs provide some services to (and generate revenue from) patients other than Medicare beneficiaries, and the revenue to LTCHs from treating those patients is not affected by this proposed rule. The analysis presented above, in conjunction with the remainder of this section, demonstrates that this proposed rule is consistent with the regulatory philosophy and principles identified in the RFA. We believe the provisions presented in this proposed rule would affect payments to LTCHs, and the effects on some LTCHs, although they may be significant, are appropriate (as discussed above).

3. Impact on Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As shown in Table 9, we are projecting a 2.6 percent decrease in estimated payments per discharge for the 2008 LTCH PPS rate year as compared to the 2007 LTCH PPS rate year for rural LTCHs as a result of the proposed payment rate changes, including the approach discussed for addressing our concerns with the existing SSO policy presented in section V.A.2. of the preamble of this proposed rule, based on the data of the 25 rural LTCHs in our database of 369 LTCHs for which complete data were available.

As shown in Table 9, the majority of the estimated decrease in estimated LTCH PPS payments in the 2008 LTCH PPS rate year as compared to the 2007 LTCH PPS rate year for proposed payment rate and policy changes for rural LTCHs is due to the proposed change in the area wage adjustment (as discussed in greater detail in section V.D.1. of the preamble of this proposed rule). Specifically, as discussed above, although we are not making any changes to the existing 5-year phase-in of the wage index adjustment that was established when the LTCH PPS was implemented (August 30, 2002; 67 FR 56018), the continued progression of this phase-in contributes to the decrease in estimated payments to rural LTCHs for RY 2008. This is because, under the established phase-in of the wage-index adjustment, LTCHs receive an increasing percentage of the applicable full wage index value (which is less than 1.0 for *all* of the 25 rural LTCHs in our database), we expect that estimated payments per discharge for rural LTCHs would decrease from RY 2007 to RY 2008 as a result of the progression of the 5-year phase-in of the wage index adjustment. Thus, the majority of the projected 2.6 percent decrease in estimated payments per discharge shown in Table 9 for rural LTCHs is due to the existing 5-year phase-in of the wage index adjustment, and is not due to proposed policy changes presented in this proposed rule. As discussed above, we believe that the decrease in estimated aggregate LTCH PPS payments resulting from this existing policy should be anticipated by LTCHs, and therefore, already accounted for in their fiscal planning. In addition, we note that, although the portion of the decrease in estimated aggregate LTCH PPS payments that is due to this existing policy is expected, we believe that any change in LTCHs' wage index values due to the continued progression of the phase-in of the area wage adjustment is appropriate since LTCHs will be receiving an increasing percentage of the applicable full wage index value, which, by definition, reflects the relative hospital wage levels for the area in which the LTCH is located as compared to the national average hospital wage level.

Furthermore, as also explained in greater detail above, we believe that the proposed changes to the area wage adjustment presented in this proposed rule (that is, the proposed use of update wage data and the proposed change in the labor-related share) would result in accurate and appropriate LTCH PPS payments in RY 2008 since they are based on the most recent available data. Such updated data appropriately reflect national differences in area wage levels and identifies the portion of the proposed Federal rate that should be adjusted to account for such differences in area wages, thereby, resulting in accurate and appropriate LTCH PPS payments. Because we cannot determine to what extent LTCHs may have planned for the decrease in estimated aggregate RY 2008 LTCH PPS payments that results from the existing 5-year phase-in of the area wage adjustment, we believe that although the effects of the proposed changes to the area wage adjustment on some rural LTCH may be significant, most rural LTCHs should be not adversely affected because those proposed changes are expected to result in appropriate LTCH PPS payments in RY 2008.

We also believe that the proposed expansion of the payment adjustment at existing § 412.534 to certain situations not presently covered by that policy for subclause (I) LTCHs may have a significant adverse impact on some rural LTCHs, although we cannot determine how significant for the reasons explained below in this section. Even though this proposed policy is estimated to reduce estimated aggregate LTCH PPS payments in RY 2008 and may result in a significant impact on some rural LTCHs, we also believe, that such changes would result in appropriately adjusted LTCH PPS payments (as explained below in this section). As discussed in greater detail in section V.B. of this proposed rule, in designing features of the original ''25 percent policy'' for co-located LTCHs (HwHs and LTCH satellites), which we are proposing to extend to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs, we provided special treatment for rural hospitals which would increase the threshold from 25 percent to 50 percent. When we established the 25 percent (or applicable percentage) payment adjustment for co-located LTCHs at existing § 412.534, after which this proposed payment adjustment for situations not presently covered by that policy has been modeled, we noted in response to comments that ''the Congress has authorized special treatment for rural areas under the Medicare program because of the particular geographic and demographic challenges in those locations, as well as the difference between the provision and availability of medical services as compared to urban areas'' (69 FR 49206). Therefore, under our proposed policy, we would apply the same

rationale to certain situations not presently covered by existing § 412.534 that would occur in subclause (I) LTCHs that are located in rural areas. Accordingly, rather than a 25 percent threshold (as is being proposed for most urban LTCHs), for rural LTCHs, the payment adjustment would be applied only to those LTCH's or LTCH satellite facility's Medicare discharges that were admitted from a non-co-located referring hospital under proposed § 412.536 or co-located host under the proposed revision to § 412.534 that are in excess of 50 percent of the LTCH's total Medicare discharges for that hospital for any cost reporting period. Under this proposal, consistent with the existing policy at § 412.534, no payment adjustment would be made if the patient has reached HCO status at the referring hospital (under proposed § 412.536) or at the co-located host (under the proposed revision to § 412.534) prior to being admitted for additional post-acute care at the LTCH. That is, in calculating the proposed 50 percent threshold (for rural LTCHs), patients who achieved HCO status prior to admission to the LTCH would not be counted toward the applicable threshold under proposed § 412.536 or under the proposed revision to § 412.534 (although the admission would still be counted toward the LTCH's total Medicare discharges).

Furthermore, because such a policy would reduce the financial incentives for all LTCHs, including rural LTCHs, to admit patients prematurely discharged from other hospitals, we believe this proposed policy would result in fewer admissions to LTCHs before a complete course of patient care is provided at the referring hospital. As noted above, any changes in admission practices as a result of this proposed policy would result in less of a decrease in estimated aggregate LTCH PPS payments than the $90 million estimated based on current admission practices. Thus, the decrease in estimated aggregate LTCH PPS payments to rural LTCHs resulting from this proposed policy change would only occur if there were no change in rural LTCH admission practices. It is our intention, under this proposed policy, to discourage LTCHs from serving as ''step-down'' units after a patient has been diagnosed and received initial treatment at another hospital, a scenario that results in two Medicare payments (one to the referring hospital and one to the LTCH) for what was essentially one episode of patient care. Rather, it is our intent to encourage LTCHs to admit patients who required additional long-stay hospital-level treatment following the provision of a full episode of care at the referring hospital. For those patients, under this proposed policy, Medicare would pay an unadjusted amount under the LTCH PPS. We believe that this proposed policy would result in more appropriate admission policies by rural LTCHs. Therefore, we believe that although the effects on some rural LTCHs of the proposed expansion of the payment adjustment at existing § 412.534 to certain situations not presently covered by that policy for subclause (I) LTCHs may be significant, most rural LTCHs should be not adversely affected because this proposed policy changes is expected to result in changes in admission practices and appropriate payments for such cases, as explained above in this section.

In addition, the approach for SSO policy discussed in section V.A.2. of this proposed rule would also contribute to the projected decrease in estimated payments to rural LTCHs for RY 2008. As discussed below in section XVI.B.4.a. of this regulatory impact analysis, we project a slightly larger than average decrease in estimated payments per discharge (as compared to urban LTCHs; see column 9 of Table 9) if this approach were adopted. About 40 percent of rural LTCHs treat a larger than average percentage of SSO cases (in fact, based on FY 2005 data for a few rural LTCHs, SSO cases represent over half of their total cases). However, we are not able to determine whether this approach, if adopted, would result in an adverse financial impact on rural LTCHs because we believe that most LTCHs (including rural LTCHs) would reduce the number of SSO cases that they admit that are ''similar to IPPS cases'' (as discussed in greater detail above). (We note that although we expect most LTCHs (including rural LTCHs) to admit fewer SSO cases under this approach to the SSO policy, most of those patients would continue to receive treatment at the acute-care hospital from which they are typically discharged immediately prior to their LTCH (short-stay) admission.) Thus, the projected 2.6 percent decrease in estimated payments per discharge shown in Table 9 for rural LTCHs represent an average maximum reduction in estimated aggregate LTCH PPS payments in RY 2008, and since we anticipate that LTCHs (including rural LTCHs) would admit fewer SSO patients for whom payments would be affected by this approach to the SSO policy, if adopted, we believe that the actual decrease in rural LTCHs' payments for RY 2008 would be less than the 2.6 percent decrease in estimated payments for RY 2008 shown in Table 9.

Furthermore, to the extent that rural LTCHs would continue to admit SSO cases with a LOS that is ''similar to IPPS cases,'' we believe the approach discussed for the SSO policy would result in an appropriate adjusted LTCH PPS payment because we believe that many of those SSO cases most likely do not receive a full course of a LTCH-level of treatment in such a short period of time since, in general, LTCHs are intended to treat longer stay patients. Therefore, although we estimate the approach discussed for the SSO policy in section V.A.2. of this proposed rule could result in a decrease in estimated aggregate LTCH PPS payment to rural LTCHs, we do not believe that such an estimated impact on rural LTCHs' LTCH PPS payments, even though possibly significant, would adversely affect most rural LTCHs because this approach would be expected to result in changes in admission practices and in appropriate payments for such cases.

For these reasons, we believe that there may be a significant impact on some rural LTCHs resulting from the proposed changes present in this proposed rule. However, a portion of the decrease in rural LTCHs' estimated payments per discharge from RY 2007 to RY 2008 would be less than what we estimate based on current admission practices (as explained above in this section). We also believe (as discussed previously) a significant portion of the projected decrease in estimated payments per discharge for RY 2008, which is due to the established phase-in of the wage index adjustment, is not a result of a proposed policy change, and may already be accounted for in LTCHs' fiscal plans. Therefore, although we believe this proposed rule would affect payments to rural LTCHs, and the effects on some rural LTCHs, although appropriate, may be significant, we are unable to determine how significantly the proposed changes presented in this proposed rule, if adopted, would adversely affect rural LTCHs. However, because we expect changes in admission practice and appropriate payments, if the changes present in this proposed rule are adopted (as discussed above), we do not anticipate that the provisions of this proposed rule would affect the ability of the vast majority of rural LTCHs to provide cost efficient services to Medicare patients nor do we expect there would be an adverse effect on beneficiaries' access to care. The analysis presented above, in conjunction with the remainder of this regulatory impact analysis, demonstrates that this proposed rule is

consistent with the regulatory philosophy and principles identified in section 1102(b) of the Act. (For additional information on the estimated impact of the changes on rural LTCHs presented in this proposed rule, refer to section XVI.B.4.a. of this regulatory impact analysis.) However, in this proposed rule, we are soliciting comments on our estimates and analysis of the impact of the provisions of this proposed rule on rural LTCHs.

4. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $120 million. This proposed rule would not mandate any requirements for State, local, or tribal governments, nor would it result in expenditures by the private sector of $120 million or more in any 1 year.

5. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this proposed rule under the criteria set forth in Executive Order 13132 and have determined that this proposed rule would not have any significant impact on the rights, roles, and responsibilities of State, local, or tribal governments or preempt State law, based on the 13 State and local LTCHs in our database of 369 LTCHs for which data were available.

6. Alternatives Considered

In preamble of this proposed rule, we are setting forth the proposed annual update to the payment rates for the LTCH PPS, as well as proposing other policy changes and discussing approaches for other areas of concern. In this preamble, we specify the statutory authority for the provisions that are presented, identify those proposed policies (and approaches discussed) when discretion has been exercised, and present rationale for our decisions, alternatives that were considered and solicit comments on suggested alternatives from commenters (where relevant).

B. Anticipated Effects of Proposed Payment Rate Changes

We discuss the impact of the proposed changes to the payment rates, factors, and other payment rate policies presented in the preamble of this proposed rule (including the approach discussed for the SSO policy in section IV.A.2. of this proposed rule) in terms of their estimated fiscal impact on the Medicare budget and on LTCHs. (We note that the impact of other policy changes presented in this proposed rule, which do not directly affect the LTCH PPS per discharge payment rates (for example, the proposed expansion of the existing payment provision for co-located LTCHs to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs discussed in section V.B. of this proposed rule and the proposed policy change relating to GME payments discussed in section XII. of this proposed rule), are not included as part of the impact analysis shown in Table 9. However, the impact of certain other proposed policies are discussed separately in section XVI.C. of this regulatory impact analysis.

1. Budgetary Impact

Section 123(a)(1) of the BBRA requires that the PPS developed for LTCHs ''maintain budget neutrality.'' We believe that the statute's mandate for budget neutrality (BN) applies only to the first year of the implementation of the LTCH PPS (that is, FY 2003). Therefore, in calculating the FY 2003 standard Federal rate under § 412.523(d)(2), we set total estimated payments for FY 2003 under the LTCH PPS so that estimated aggregate payments under the LTCH PPS are estimated to equal the amount that would have been paid if the LTCH PPS had not been implemented. However, as discussed in greater detail in the August 30, 2002 final rule (67 FR 56033 through 56036), the FY 2003 LTCH PPS standard Federal rate ($34,956.15) was calculated based on all LTCHs being paid 100 percent of the standard Federal rate in FY 2003. As discussed in section IV.D.5. of this proposed rule, during LTCH rate years governed by the 5-year transition period policy set forth at § 412.533(a), we applied a BN offset to payments to account for the monetary effect of the applicable transition period methodology (including the option to elect payments based on 100 percent of the Federal rate in lieu of the transition blend methodology) in a given LTCH PPS rate year. Specifically, for FY 2003 and RYs 2004 through 2007, the amount of the transition period BN offset was equal to 1 minus the ratio of the estimated payments based on 100 percent of the LTCH PPS Federal rate to the projected total Medicare program payments that would be made under the transition methodology and the option to elect payment based on 100 percent of the Federal prospective payment rate. However, as we discuss in greater detail in section IV.D.5. of this proposed rule, we are no longer projecting a small cost for the 2008 LTCH PPS rate year (July 1, 2007 through June 30, 2008) even though some LTCH's will have a cost reporting period for the 5th year of the transition period which will be concluding in the first 3 months of the 2008 LTCH PPS rate year. Based on the most recent available data, we are projecting that the vast majority of LTCHs would have made the election to be paid based on 100 percent of the Federal rate rather than the transition blend, which would result in a negligible cost to the Medicare program. Therefore, in this proposed rule, we did not propose a transition BN offset to all LTCH PPS payments for RY 2008 to account for the estimated cost of the transition period methodology (including the option to elect payment based on 100 percent of the Federal rate) in RY 2008.

2. Impact on Providers

The basic methodology for determining a per discharge LTCH PPS payment is set forth in § 412.515 through § 412.525. In addition to the basic LTC–DRG payment (standard Federal rate multiplied by the LTC–DRG relative weight), we make adjustments for differences in area wage levels, COLA for Alaska and Hawaii, and SSOs. Furthermore, LTCHs may also receive HCO payments for those cases that qualify based on the threshold established each rate year.

To understand the impact of the proposed changes to the LTCH PPS payment rates and payment rate policy changes discussed in sections IV. and V.A. of this proposed rule on different categories of LTCHs for the 2008 LTCH PPS rate year, it is necessary to estimate payments per discharge under the LTCH PPS rates, factors and policies established for RY 2007 (established in the RY 2007 LTCH PPS final rule (71 FR 27798 through 27939)) and to estimate proposed payments per discharge that would be made under the proposed LTCH PPS rates, factors and policies for the 2008 LTCH PPS rate year (as discussed in the preamble of this proposed rule). We also evaluated the change in estimated 2007 LTCH PPS rate year payments to estimated proposed 2008 LTCH PPS rate year

payments (on a per discharge basis) for each category of LTCHs.

Hospital groups were based on characteristics provided in the OSCAR data, FY 2002 through FY 2004 cost report data in HCRIS, and PSF data. Hospitals with incomplete characteristics were grouped into the ''unknown'' category. Hospital groups include:

- Location: Large Urban/Other Urban/Rural.
- Participation date.
- Ownership control.
- Census region.
- Bed size.

To estimate the impacts of the proposed payment rates and payment rate policy changes among the various categories of existing providers, we used LTCH cases from the FY 2005 MedPAR file to estimate payments for RY 2007 and to estimate proposed payments for RY 2008 for 369 LTCHs. While currently there are just under 400 LTCHs, the most recent growth is predominantly in for-profit LTCHs that provide respiratory and ventilator-dependent patient care. We believe that the discharges from the FY 2005 MedPAR data for the 369 LTCHs in our database, which includes 246 proprietary LTCHs, provide sufficient representation in the LTC–DRGs containing discharges for patients who received LTCH care for the most commonly treated LTCH patients' diagnoses.

As discussed in greater detail in section VII. of this proposed rule, under the 5-year transition set forth at § 412.533(a), a LTCH's total payment under the LTCH PPS was based on an increasing percentage of the Federal rate with a corresponding decrease in the percentage of its LTCH PPS payment based on reasonable cost principles. However, effective for cost reporting periods beginning on or after October 1, 2006, total LTCH PPS payments are based entirely on the Federal rate. Therefore, even though some LTCH's will have a cost reporting period for the 4th year of the transition period that will be concluding in the first 3 months of the 2008 LTCH PPS rate year, the portion of those LTCHs' LTCH PPS payments that will be based on reasonable cost principles during RY 2008 is negligible relative to LTCH PPS payments based on the Federal rate. This is because, as discussed in greater detail in section IV.D.5. of this proposed rule, based on the most recent available data, we are projecting that the vast majority of LTCHs have already made the election to be paid based on 100 percent of the Federal rate rather than the transition blend prior to the start of their FY 2006 cost reporting period (that is, the 4th year of the transition period as set forth at § 412.533(a)), and even for those few remaining LTCHs paid under the transition blend methodology set forth at § 412.533(a), their total LTCH PPS payments are now based mostly on the Federal rate (since the transition blend percentages for cost reporting periods beginning during FY 2006 are 80 percent of the Federal rate and 20 percent of the LTCH PPS payment based on reasonable cost principles). Therefore, in this proposed rule, we are no longer providing a separate impact table reflecting the applicable transition blend percentages, which required cost data to determine estimated LTCH PPS payments based on reasonable cost principles. Accordingly, the impact analyses of the proposed payment rates and payment rate policy changes presented below reflects estimated LTCH PPS payments to all LTCHs based solely on the Federal rate.

These impacts reflect the estimated ''losses'' or ''gains'' among the various classifications of LTCHs for the 2007 LTCH PPS rate year (July 1, 2006 through June 30, 2007) compared to the 2008 LTCH PPS rate year (July 1, 2007 through June 30, 2008) based on the proposed payment rates and payment rate policy changes presented in this proposed rule. Prospective payments for the 2007 LTCH rate year were based on the standard Federal rate of $38,086.04, the outlier fixed-loss amount of $14,887, and the LTCHs' estimated case-mix based on FY 2005 LTCH claims data. Estimated proposed prospective payments for the 2008 LTCH PPS rate year would be based on the proposed standard Federal rate of $38,356.45 (based on the proposed 0.71 percent update discussed in section IV.C.3. of the preamble to this proposed rule), the proposed outlier fixed-loss amount of $18,774, and the same FY 2005 LTCH claims data.

3. Calculation of Prospective Payments

To estimate per discharge payments under the LTCH PPS, we simulated payments on a case-by-case basis by applying the established (for RY 2007) and proposed (for RY 2008) adjustments for area wage differences (as described in section IV.D.1. of the preamble of this proposed rule), and the COLA for Alaska and Hawaii (as described in section IV.D.2. of the preamble of this proposed rule). As discussed above, we also accounted for the existing payment policy for SSOs in RY 2007 and the approach for the SSO policy in RY 2008 discussed in section V.A.2. of this proposed rule). Additional payments would also be made for HCOs (as described in section IV.D.3. of this proposed rule). As noted in section IV.D.4. of this proposed rule, we are not proposing to make adjustments for rural location, geographic reclassification, indirect medical education costs, or a DSH payment for the treatment of low-income patients because sufficient new data have not been generated that would enable us to conduct a comprehensive reevaluation of these payment adjustments.

We adjusted for area wage differences for estimated 2007 LTCH PPS rate year payments by computing a weighted average of a LTCH's applicable wage index during the period from July 1, 2006 through June 30, 2007 because some providers may experience a change in the wage index phase-in percentage during that period. For cost reporting periods beginning on or after October 1, 2005, and before September 30, 2006 (FY 2006), the labor portion of the Federal rate is adjusted by four-fifths of the applicable LTCH PPS wage index. For cost reporting periods beginning on or after October 1, 2006, and before September 30, 2007 (FY 2007), the labor portion of the Federal rate is adjusted by five-fifths (that is, the full amount) of the applicable LTCH PPS wage index. Therefore, during RY 2007, a provider with a cost reporting period that began October 1, 2006, would have 3 months (July 2006 through September 2006) of payments under the four-fifths wage index value and 9 months (October 2006 through June 2007) of payment under the (full) five-fifths wage index value. For this provider, we computed a blended wage index of 25 percent (3 months/12 months) of the four-fifths wage index value and 75 percent (9 months/12 months) of the (full) five-fifths wage index value. The applicable LTCH PPS wage index values for the 2007 LTCH PPS rate year are shown in Tables 1 and 2 of the Addendum to the RY 2007 LTCH PPS final rule (71 FR 27906 through 27930). We adjusted for area wage differences for estimated 2007 LTCH PPS rate year payments using the current LTCH PPS labor-related share of 75.665 percent (71 FR 27830).

Similarly, we adjusted for area wage differences for estimated proposed 2008 LTCH PPS rate year payments by computing a weighted average of a LTCH's applicable wage index during the period from July 1, 2007, through June 30, 2008, because, although under the established phase-in of the wage index adjustment for cost reporting periods beginning on or after October 1, 2006, the applicable LTCH wage index value is the full (five-fifths) LTCH PPS wage index value, during RY 2008 some providers will still experience a change in the wage index phase-in percentage

during that period. For example, during RY 2008, a provider with a FY 2006 cost reporting period that began September 1, 2006, (and will end on August 31, 2007,) would have 2 months (July 2007 and August 2007) of payments under the proposed four-fifths wage index value and 10 months (September 2007 through June 2007) of payment under the proposed (full) five-fifths wage index value. For this provider, we computed a blended wage index of 16.7 percent (2 months/12 months) of the proposed four-fifths wage index value and 83.3 percent (10 months/12 months) of the proposed (full) five-fifths wage index value. The proposed applicable LTCH PPS wage index values for the 2008 LTCH PPS rate year are shown in Tables 1 and 2 of Addendum A to this proposed rule. We adjusted for area wage differences for estimated 2008 LTCH PPS rate year payments using the proposed LTCH PPS labor-related share of 75.511 percent (see section IV.D.1.c. of this proposed rule).

As noted previously in this proposed rule, under the 5-year transition set forth at § 412.533(a), a LTCH's total payment under the LTCH PPS was based on an increasing percentage of the Federal rate with a corresponding decrease in the percentage of the LTCH PPS payment that is based on reasonable cost principles. However, effective for cost reporting periods beginning on or after October 1, 2006, total LTCH PPS payments are based solely on the Federal rate. Therefore, even though some LTCH's will have a cost reporting period for the 4th year of the transition period that will be concluding in the first 3 months of the 2008 LTCH PPS rate year, the portion of those LTCH PPS payments that will be based on reasonable cost principles during RY 2008 is negligible relative to LTCH PPS payments based on the Federal rate, and therefore, we are no longer estimating transition payments as we have done in past impact analyses (for example, 71 FR 27892).

Furthermore, in estimating both RY 2007 and proposed RY 2008 LTCH PPS payments, we did not apply a transition period BN offset to payments to account for the effect of the 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments (established in the August 30, 2002 final rule (67 FR 56034)). This is because, for RY 2007, we established a 0.0 percent BN offset (a BN factor of 1.0) to payments to account for the effect of the 5-year transition methodology and election of payment based on 100 percent of the Federal rate on Medicare program payments in RY 2007 (71 FR 27841). As noted above and discussed in greater detail in section IV.D.5. of this proposed rule, we are not proposing a transition period BN offset to all LTCH PPS payments in RY 2008 to account for the estimated cost of the transition period methodology (including the option to elect payment based on 100 percent of the Federal rate) in RY 2008 since we are projecting that such costs would be negligible.

As noted in Table 9, we show the impact as if all LTCHs would be paid 100 percent of the Federal rate since, based on the most recent available data and the transition blend percentages set forth at § 412.533(a), nearly all LTCH PPS payments would be based on 100 percent of the applicable LTCH PPS standard Federal rate during the majority of RYs 2007 and 2008. Table 9 illustrates the estimated aggregate impact of the LTCH PPS among various classifications of LTCHs.

- The first column, LTCH Classification, identifies the type of LTCH.
- The second column lists the number of LTCHs of each classification type.
- The third column identifies the number of LTCH cases.
- The fourth column shows the estimated payment per discharge for the 2007 LTCH PPS rate year.
- The fifth column shows the estimated proposed payment per discharge for the 2008 LTCH PPS rate year.
- The sixth column shows the estimated percentage change in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year for proposed changes to the Federal rate.
- The seventh column shows the percentage change in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year for proposed changes to the area wage adjustment at § 412.525(c) (as discussed in section IV.D.1. of the preamble of this proposed rule).
- The eighth column shows the percent change in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year for the approach discussed for addressing our concerns with the existing SSO policy at § 412.529 (as discussed in section V.A.2. of the preamble of this proposed rule).
- The ninth column shows the estimated percentage change in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year for all proposed changes (and includes the estimated impact of the approach for the SSO policy discussed in section V.A.2. of the preamble of this proposed rule).

TABLE 9.—PROJECTED IMPACT OF PROPOSED PAYMENT RATE AND PAYMENT RATE POLICY CHANGES TO LTCH PPS PAYMENTS FOR RY 2008*

[Estimated 2007 LTCH PPS rate year payments compared to estimated proposed 2008 LTCH PPS rate year payments*]

LTCH Classification	Number of LTCHs	Number of LTCH PPS cases	Average estimated RY 2007 LTCH PPS rate year payment per case [1]	Average estimated proposed RY 2008 LTCH PPS rate year payment per case [2]	Percent increase in estimated payments per discharge from RY 2007 to (proposed) RY 2008 for proposed changes to the Federal rate [4]	Percent decrease [3] in estimated payments per discharge from RY 2007 to RY 2008 for proposed changes to the area wage adjustment [5]	Percent decrease [3] in estimated payments per discharge from RY 2007 to RY 2008 for approach discussed for the SSO policy [6*]	Percent decrease [3] in estimated payments per discharge from RY 2007 to RY 2008 for all proposed changes [7*]
ALL PROVIDERS	369	129,584	$31,486	$31,278	0.6	0.5	0.9	0.7
BY LOCATION:								
RURAL	25	5,044	25,100	24,447	0.7	2.2	1.0	2.6
URBAN	344	124,540	31,744	31,555	0.6	0.5	0.9	0.6
LARGE	181	77,511	32,819	32,768	0.6	0.1	0.9	0.2
OTHER	163	47,029	29,974	29,555	0.6	1.1	1.0	1.4

TABLE 9.—PROJECTED IMPACT OF PROPOSED PAYMENT RATE AND PAYMENT RATE POLICY CHANGES TO LTCH PPS PAYMENTS FOR RY 2008*—Continued

[Estimated 2007 LTCH PPS rate year payments compared to estimated proposed 2008 LTCH PPS rate year payments*]

LTCH Classification	Number of LTCHs	Number of LTCH PPS cases	Average estimated RY 2007 LTCH PPS rate year payment per case [1]	Average estimated proposed RY 2008 LTCH PPS rate year payment per case [2]	Percent increase in estimated payments per discharge from RY 2007 to (proposed) RY 2008 for proposed changes to the Federal rate [4]	Percent decrease [3] in estimated payments per discharge from RY 2007 to RY 2008 for proposed changes to the area wage adjustment [5]	Percent decrease [3] in estimated payments per discharge from RY 2007 to RY 2008 for approach discussed for the SSO policy [6]*	Percent decrease [3] in estimated payments per discharge from RY 2007 to RY 2008 for all proposed changes [7]*
BY PARTICIPATION DATE:								
BEFORE OCT. 1983	15	7,966	26,999	27,157	0.6	−0.1	0.4	−0.6
OCT. 1983–SEPT. 1993	44	22,661	33,171	33,050	0.6	0.3	1.0	0.4
OCT. 1993–SEPT. 2002	207	75,380	31,382	31,169	0.6	0.6	0.9	0.7
AFTER OCT. 2002	101	23,163	31,709	31,303	0.6	1.0	1.0	1.3
UNKNOWN	2	414	31,888	32,068	0.6	−0.4	0.8	−0.6
BY OWNERSHIP CONTROL:								
VOLUNTARY	78	26,725	30,329	30,069	0.6	0.6	1.0	0.9
PROPRIETARY	246	96,236	31,715	31,532	0.6	0.5	0.9	0.6
GOVERNMENT	13	3,087	32,116	31,763	0.6	0.9	0.9	1.1
UNKNOWN	32	3,536	33,437	33,072	0.6	0.8	1.0	1.1
BY CENSUS REGION:								
NEW ENGLAND	14	9,858	26,775	26,984	0.6	−0.4	0.5	−0.8
MIDDLE ATLANTIC	28	7,697	32,405	32,063	0.6	1.0	0.9	1.1
SOUTH ATLANTIC	43	13,684	35,178	34,834	0.6	0.9	1.0	1.0
EAST NORTH CENTRAL	66	18,555	35,545	35,508	0.6	0.1	0.9	0.1
EAST SOUTH CENTRAL	28	7,525	31,242	30,611	0.6	1.6	1.2	2.0
WEST NORTH CENTRAL	18	5,173	34,383	34,057	0.6	0.7	1.0	0.9
WEST SOUTH CENTRAL	134	52,681	27,848	27,454	0.6	1.2	0.9	1.4
MOUNTAIN	22	6,378	33,642	33,894	0.6	−1.0	1.1	−0.7
PACIFIC	16	8,033	41,224	41,801	0.6	−1.3	0.8	−1.4
BY BED SIZE:								
BEDS: 0–24	25	4,120	29,754	29,266	0.6	1.1	1.1	1.6
BEDS: 25–49	174	43,374	31,469	31,133	0.6	0.9	0.9	1.1
BEDS: 50–74	57	22,539	31,860	31,664	0.6	0.4	1.0	0.6
BEDS: 75–124	45	21,862	32,641	32,473	0.6	0.5	0.9	0.5
BEDS: 125–199	23	21,724	30,395	30,286	0.6	0.3	0.9	0.4
BEDS: 200 +	13	12,429	30,756	30,869	0.6	−0.2	0.7	−0.4
UNKNOWN	32	3,536	33,437	33,072	0.6	0.8	1.0	1.1

* As discussed above in section XVI.A.1. of this regulatory impact analysis, we estimate that the approach discussed for addressing our concerns with the existing SSO policy presented in section V.A.2. of the preamble of this proposed rule would result in the decrease in estimated payments in the 2008 LTCH PPS rate year (approximately an additional $37 million, on average, for all LTCHs as shown in column 8). However, we note that in absence of including such an approach, we estimate that in place of the 0.7 percent decrease in estimated payments per discharge, on average, for all LTCHs (shown in column 9), there would be 0.3 percent increase in estimated payments per discharge, on average, for all LTCHs from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year for all proposed payment rate and policy changes presented in the preamble of this proposed rule. We also note that, as discussed above in section XVI.B.4. of this regulatory impact analysis, the 2.2 percent decrease in estimated aggregate LTCH PPS payments due to the proposed expansion of the special payment provision for co-located LTCHs to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs (as discussed in section V.B. of this proposed rule) is not reflected in this impact table. However, the impact of the proposed expansion of the ''25 percent'' policy is discussed in greater detail below in section XVI.C.1. of this regulatory impact analysis.

[1] Estimated average estimated payment per case for the 12-month period of July 1, 2006 through June 30, 2007.

[2] Estimated proposed average estimated payment per case for the 12-month period of July 1, 2007 through June 30, 2008.

[3] As the percent change shown in this column represents a percent decrease in estimated payments per discharge, a negative (that is, minus) sign indicates a percent increase in estimated payments per discharge and the absence of a sign (that is, a positive sign) indicates a percent decrease in estimated payments per discharge.

[4] Percent change in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year for the proposed changes to the Federal rate. (Note, as discussed in section XVI.B.4. of this regulatory impact analysis, because about 35 percent of all LTCH cases are projected to receive a payment under the existing SSO policy that is based either on the estimated cost of the case or the ''IPPS comparable amount'' (rather than the proposed Federal rate), the percent change in estimated payments per discharge due to the proposed changes to the Federal rate for most of the categories of LTCHs, 0.6 percent, is slightly less than the proposed update to the Federal rate of 0.71 percent.)

[5] Percent change in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year for proposed changes to the area wage adjustment policy at § 412.525(c) (as discussed in section V.D.1. of the preamble of this proposed rule).

[6] Percent change in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year for the approach discussed to address our concerns with the existing SSO policy at § 412.529 (presented in section V.A.1.a. of the preamble of this proposed rule).

[7] Percent change in estimated payments per discharge from the 2007 LTCH PPS rate year (as established in the RY 2007 LTCH PPS final rule (71 FR 27798 through 27939)) to the 2008 LTCH PPS rate year (as discussed in the preamble of this proposed rule, including the approach to the SSO policy discussed in section V.A.2. of this proposed rule) for all of the payment rate and policy provisions presented in the preamble of this proposed rule. Note, this column, which shows the percent change in estimated payments per discharge for all proposed changes, may not exactly equal the sum of the percent changes in estimated payments per discharge for proposed changes to the Federal rate (column 7), for proposed area wage adjustment changes (column 8) and the approach discussed for the SSO policy (column 9) due to the effect of estimated changes in aggregate HCO payments, as well as other interactive effects that cannot be isolated.

4. Results

Based on the most recent available data (as described previously for 369 LTCHs), we have prepared the following summary of the impact (as shown in Table 9) of the proposed LTCH PPS payment rate and payment rate policy changes presented in this proposed rule (including the approach to the SSO policy discussed in section V.A.2. of this proposed rule). (As noted above, the impact of other policy changes presented in this proposed rule, which do not directly affect the LTCH PPS per discharge payment rate, such as the proposed expansion of the existing payment provision for co-located LTCHs

to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs, are not included as part of the impact analysis shown in Table 9. However, the impact of those other proposed policies are discussed separately in section XVI.C. of this regulatory impact analysis.)

The impact analysis in Table 9 shows that estimated payments per discharge are expected to decrease approximately 0.7 percent, on average, for all LTCHs from the 2007 LTCH PPS rate year as compared to the 2008 LTCH PPS rate year as a result of the proposed payment rate and policy changes presented in this proposed rule. We note that although we are proposing a 0.71 percent increase to the Federal rate for RY 2008, the impact analysis shown in Table 9 (column 6), only shows a 0.6 percent increase in estimated payments per discharge from RY 2007 to RY 2008, for most categories of LTCHs, as a result of the proposed changes to the Federal rate. The reason that this column shows an estimated 0.6 percent increase rather than an estimated 0.7 percent increase (based on the proposed 0.71 percent update to the Federal rate) is because about 35 percent of all LTCH cases are projected to receive a payment under the existing SSO policy. Under either the existing SSO policy or the approach for the SSO policy discussed in section V.A.2. of this proposed rule, the majority of SSO cases would receive an adjusted LTCH PPS payment in RY 2008 that would be based either on the estimated cost of the case or the ''IPPS comparable amount'' (that is, either under the ''blend amount'' at existing § 412.529(c)(2)(iv) or the amount discussed in our approach to address our concerns with the existing SSO policy) rather than a LTCH PPS payment based on the proposed Federal rate. Therefore, because over 30 percent of *all* LTCH PPS cases would receive a payment that is not based on the proposed Federal rate, the percent change in estimated payments per discharge due to the proposed changes to the Federal rate for most categories of LTCHs shown in Table 9 is projected to be slightly less (0.6 percent) than the proposed 0.71 percent update to the Federal rate. Although, we are proposing a 0.71 percent increase to the Federal rate for RY 2008, the projected percent decrease in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year shown in Table 9 is due the proposed changes to the area wage adjustment (discussed in section IV.D.1. of this proposed rule), in conjunction with the approach to the SSO policy (discussed in section V.A.2. of this proposed rule) and the proposed increase to the HCO fixed-loss amount (as discussed in section IV.D.3.c. of this proposed rule).

Specifically, as we discussed in greater detail in section IV.D.1. of the preamble of this proposed rule, we are proposing to update the wage index values for RY 2008 in accordance with the progression of the 5-year phase-in of the wage index adjustment. We are also proposing to decrease the labor-related share from 75.665 percent to 75.511 percent under the LTCH PPS beginning in RY 2008. Because this proposed change to the labor-related share would lower the portion of the Federal rate that is adjusted by the wage index to account for differences in local cost variation (in accordance with § 412.525(c)), LTCHs located in areas with a proposed RY 2008 wage index value that is greater than 1.0 would experience a slight decrease in estimated payments per discharge as a result of the proposed decrease in the labor-related share. Conversely, LTCHs located in areas with a proposed RY 2008 wage index value that is less than 1.0 are expected to experience an increase in estimated payments per discharge as a result of the proposed decrease in the labor-related share since a smaller portion of the Federal rate would be adjusted by the proposed wage index to account for differences in local cost variation (in accordance with § 412.525(c)). However, the effect of the progression of the 5-year phase-in of the wage index adjustment, which results in a relatively more significant decrease in estimated payments for LTCHs located in areas with a proposed RY 2008 wage index value that is less than 1.0, would likely offset the effect on payments due to the decrease in the labor-related share. Consequently, the proposed changes to the wage index adjustment presented in this proposed rule for LTCHs located in areas with a proposed RY 2008 wage index value that is less than 1.0 are expected to also contribute to the projected decrease in estimated payments per discharge from RY 2007 as compared to RY 2008.

In addition, under the approach discussed to address our concerns with the existing SSO policy (discussed in section V.A.2. of this proposed rule), those LTCH SSO cases with a covered LOS that is less than or equal to the IPPS ALOS plus one standard deviation for the same DRG would receive a lower adjusted LTCH PPS payment than under the current SSO policy. We believe that the LTCH cases meeting the criteria stated above appear to be similar to the same type of cases treated in an acute care hospital and paid for under the IPPS since one standard deviation is a statistical test which measures the certainty of the average of a set of measurements for the purpose of this data analysis. Accordingly, we believe the approach discussed for the SSO policy could be appropriate, given that many of these SSO cases that are ''similar to IPPS cases'' most likely do not receive a full course of a LTCH-level of treatment in such a short period of time since, in general, LTCHs are intended to treat longer stay patients. Furthermore, since by far the majority of SSO cases were admitted to the LTCH directly from an acute-care hospital, they are likely to still be in need of acute-level care at the time of admission to the LTCH. We believe that this may indicate that the LTCH admission is a premature and inappropriate discharge from the acute-care hospital and an inappropriate admission to the LTCH. We believe that the approach for the SSO policy could result in appropriate payments for short-stay cases treated at LTCHs as discussed in greater detail in section V.A.2. of this proposed rule.

Furthermore, as we discussed in greater detail in section IV.D.3.c. of the preamble of this proposed rule, given the regulatory requirement at § 412.525(a) that estimated outlier payments equal 8 percent of estimated total LTCH PPS payments, this decrease in estimated LTCH PPS payments for RY 2008 resulting primarily from the proposed changes to the SSO policy and the proposed changes to the area wage adjustment would require a proposed increase in the HCO fixed-loss amount to maintain estimated outlier payments at 8 percent of the estimated total LTCH PPS payments (resulting from the proposed payment rate and policy changes presented in this proposed rule). Thus, the proposed increase in the outlier fixed-loss amount also contributes to the projected decrease in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year. For example, many LTCHs are expected to receive a decrease in HCO payments. As a result of the proposed increase to the fixed-loss amount from the 2007 LTCH PPS rate year ($14,887) to the 2008 LTCH PPS rate year ($18,774), fewer cases would qualify as outlier cases (that is, the estimated cost of the case exceeds the outlier threshold). Since many LTCHs are expected to receive fewer outlier payments, total estimated payments per discharge are expected to decrease slightly from RY 2007 to RY 2008.

a. Location

Based on the most recent available data, the majority of LTCHs are in urban areas. Approximately 7 percent of the LTCHs are identified as being located in a rural area, and approximately 4 percent of all LTCH cases are treated in these rural hospitals. The impact analysis presented in Table 9 shows that the percent decrease in estimated payments per discharge for the 2007 LTCH PPS rate year compared to the 2008 LTCH PPS rate year for rural LTCHs would be 2.6 percent for all proposed changes, and would be 0.6 percent for urban LTCHs for all proposed changes.

The primary reasons that the projected percent decrease in estimated payments to rural LTCHs is greater than that for urban LTCHs is that rural LTCHs are expected to experience a larger decrease in estimated payments due to the approach discussed for the SSO policy because, based on the most recent available data, many rural LTCHs treat a larger than average percentage of SSO cases (in fact, for a few rural LTCHs, SSO cases represent over half of their total cases based on FY 2005 data). Furthermore, rural LTCHs are projected to experience a higher than average decrease in estimated payments per discharge as a result of the proposed changes to the area wage adjustment because the proposed wage index for all rural LTCHs is less than 1.0, as explained above in this section.

Large urban LTCHs are projected to experience a 0.2 percent decrease in estimated payments per discharge from the 2007 LTCH PPS rate year compared to the 2008 LTCH PPS rate year, while other urban LTCHs are projected to experience a 1.4 percent decrease in estimated payments per discharge from the 2007 LTCH PPS rate year compared to the 2008 LTCH PPS rate year, as shown in Table 9. Other urban LTCHs are projected to experience a higher than average decrease in estimated payments per discharge primarily because of the proposed changes to the area wage adjustment. This is because the majority of other urban LTCHs (over 80 percent) are located in urban areas that have a proposed wage index value of less than 1.0, and therefore, would experience a higher than average decrease in estimated payments per discharge as a result of the proposed changes to the wage index adjustment, as explained above. In addition, other urban LTCHs have a slightly higher percentage of SSO cases and therefore, are projected to experience a slightly higher than average decrease in estimated payments per discharge as a result of the approach discussed for the SSO policy (as also discussed in greater detail above in this section).

Large urban LTCHs are projected to experience a lower than average decrease in estimated payments per discharge for all changes primarily because of the proposed changes to the area wage adjustment because the majority of large urban LTCHs are located in urban areas that have a proposed wage index value of greater than 1.0, as explained above in this section.

b. Participation Date

LTCHs are grouped by participation date into four categories: (1) Before October 1983; (2) between October 1983 and September 1993; (3) between October 1993 and September 2002; and (4) after October 2002. Based on the most recent available data, the majority (approximately 56 percent) of the LTCH cases are in hospitals that began participating between October 1993 and September 2002, and are projected to experience a 0.7 percent decrease in estimated payments per discharge from the 2007 LTCH PPS rate year compared to the 2008 LTCH PPS rate year, as shown in Table 9.

Approximately 12 percent of LTCH PPS cases are in LTCHs that began participating in Medicare between October 1983 and September 1993, and those LTCHs are projected to experience a 0.4 percent decrease in estimated payments per discharge from the 2007 LTCH PPS rate year compared to the 2008 LTCH PPS rate year, as shown in Table 9. We are projecting that LTCHs that began participating in Medicare between October 1983 and September 1993 would experience a lower than average decrease in estimated payments for RY 2008 primarily because we are projecting that these LTCHs are expected to experience a lower than average decrease (0.3 percent) in estimated payments per discharge due to the proposed changes to the area wage adjustment. This is because many of the LTCHs that began participating in Medicare between October 1983 and September 1993 are located in areas where the proposed RY 2008 wage index value would be greater than the RY 2007 wage index value, and because several of these LTCHs are located in areas that have a proposed wage index value of greater than 1.0, (as explained above).

LTCHs that began participating before October 1983 are projected to experience a 0.6 percent increase in estimated payments per discharge from the 2007 LTCH PPS rate year compared to the 2008 LTCH PPS rate year (see Table 9). We are projecting that LTCHs that began participating in Medicare before October 1983 would experience an increase in estimated payments for RY 2008 as compared to RY 2007 primarily because we are projecting that LTCHs in this participation date category would experience a slight increase in estimated payments in RY 2008 as compared to RY 2007 due to the proposed changes to the area wage adjustment. This is because many of the LTCHs that began participating in Medicare before October 1983 are located in areas where the proposed RY 2008 wage index value would be greater than the proposed RY 2007 wage index value, and because several of these LTCHs are located in areas that would have a proposed RY 2008 wage index value of greater than 1.0, (as discussed in section XVI.B.4. of this regulatory impact analysis). In addition, LTCHs that began participating in Medicare before October 1983 are expected to experience a lower than average decrease in estimated payments due to the approach discussed for the SSO policy (discussed in section V.A.2. of this proposed rule). Specifically, based on the FY 2005 LTCH claims data, the majority of LTCHs in this participation date category treat a smaller than average percentage of SSO cases.

Approximately 27 percent of LTCHs began participating in Medicare after October 2002 (that is, the beginning of the LTCH PPS, which was implemented for cost reporting periods beginning on or after October 1, 2002), and those LTCHs are projected to experience a 1.3 percent decrease in estimated payments per discharge from the 2007 LTCH PPS rate year compared to the 2008 LTCH PPS rate year (see Table 9). We are projecting that LTCHs that began participating in Medicare after October 2002 will experience a higher than average decrease in estimated payments for RY 2008 primarily because we are projecting that these LTCHs would experience a larger than average decrease (1.0 percent) in estimated payments per discharge due to the proposed changes to the area wage adjustment. This is because the majority of the LTCHs that began participating in Medicare after October 2002 are located in areas where the proposed RY 2008 wage index value would be less than the RY 2007 wage index value, and because the majority (over 80 percent) of these LTCHs are located in areas that would have a proposed RY 2008 wage index value of less than 1.0, (as discussed above in this section).

c. Ownership Control

Other than LTCHs whose ownership control type is unknown, LTCHs are grouped into three categories based on ownership control type: Voluntary; proprietary; and government. Based on the most recent available data, approximately 4 percent of LTCHs are identified as government-owned and operated. We expect that for these government-owned and operated LTCHs, estimated 2008 LTCH PPS rate year payments per discharge would decrease 1.1 percent in comparison to the 2007 LTCH PPS rate year, as shown in Table 9. We are projecting that government-run LTCHs would experience a higher than average decrease in estimated payments in RY 2008 as compared to RY 2007 primarily due to the effect of the proposed changes to the area wage adjustment. This is because all but 3 of the 13 government-run LTCHs in our database are located in areas where the proposed wage index value for RY 2008 is less than 1.0, as explained above.

Similarly, we project that estimated 2008 LTCH PPS rate year payments per discharge for voluntary LTCHs, which account for approximately 21 percent of LTCHs, would decrease 0.9 percent in comparison to estimated 2007 LTCH PPS rate year payments (see Table 9). We are projecting that voluntary LTCHs would experience a slightly higher than average decrease in estimated payments in RY 2008 as compared to RY 2007 due to the proposed changes to the wage index adjustment, as well as the approach discussed for the SSO policy. Specifically, we expect voluntary LTCHs would experience a slightly higher than average decrease in estimated payments in RY 2008 as compared to RY 2007 due to the approach discussed for the SSO policy since over half (48 LTCHs) of the voluntary LTCHs have a higher than average percentage of SSO cases. We expect voluntary LTCHs would experience a slightly higher than average decrease in estimated payments in RY 2008 as compared to RY 2007 due to the proposed changes to the wage index adjustment since over three-quarters (61 LTCHs) of the voluntary LTCHs are located in areas where the proposed wage index value is less than 1.0 (as discussed above).

The majority (approximately 67 percent) of LTCHs are identified as proprietary. We project that 2008 LTCH PPS rate year estimated payments per discharge for these proprietary LTCHs would decrease 0.6 percent in comparison to the 2007 LTCH PPS rate year (see Table 9).

d. Census Region

Estimated payments per discharge for the 2008 LTCH PPS rate year are projected to decrease for LTCHs located in most regions (with the exception of New England, Mountain, and Pacific regions) in comparison to the 2007 LTCH PPS rate year. The percent decrease in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year for most regions is largely attributable to the approach discussed for the SSO policy, the proposed changes in the area wage adjustment, and the increase in the HCO fixed-loss amount (as explained above).

Of the 9 census regions, we project that the decrease in proposed 2008 LTCH PPS rate year estimated payments per discharge in comparison to the 2007 LTCH PPS rate year would have the largest impact on LTCHs in the East South Central and West South Central regions (2.0 percent and 0.5 percent, respectively; see Table 9). LTCHs located in both the East South Central and West South Central regions are expected to experience a higher than average decrease in estimated payments due to the proposed changes in the area wage adjustment (1.6 percent for the East South Central region, and 1.2 percent for the West South Central region, as shown in Table 9). This is because nearly all LTCHs located in the East South Central region and the West South Central regions are located in areas with a wage index value that is less than 1.0 (as described above). In addition, LTCHs are also expected to experience a higher than average decrease in estimated payments per discharge due to the approach discussed for the SSO policy since many of the LTCHs in these two regions have a larger than average percentage of SSO cases (based on FY 2005 LTCH claims data).

We project that proposed 2008 LTCH PPS rate year estimated payments per discharge would increase for LTCHs in the New England, Mountain and Pacific region in comparison to the 2007 LTCH PPS rate year (0.8 percent, 0.7 percent and 1.4 percent, respectively; see Table 9). We estimate that for LTCHs located in these three regions, the projected increases in estimated payments per discharge for the 2008 LTCH PPS rate year compared to the 2007 LTCH PPS rate year are largely a result of the proposed changes to the area wage adjustment. Specifically, we are projecting an increase in estimated LTCH PPS payments due to the changes to the area wage adjustment because all LTCHs in the New England and Pacific regions and the majority (over 68 percent) of LTCHs in the Mountain region are located in areas where the proposed wage index value for RY 2008 is greater than 1.0, and because many of the LTCHs in these three regions are located in areas where the proposed RY 2008 wage index value is greater than the RY 2007 wage index value (as described above).

e. Bed Size

LTCHs were grouped into seven categories based on bed size: 0–24 beds; 25–49 beds; 50–74 beds; 75–124 beds; 125–199 beds; greater than 200 beds; and unknown bed size.

We are projecting a decrease in estimated 2008 LTCH PPS rate year payments per discharge in comparison to the 2007 LTCH PPS rate year for all bed size categories except for the category with greater than 200 beds. Most LTCHs are in bed size categories where estimated 2008 LTCH PPS rate year payments per discharge are projected to decrease between 1.1 percent and 1.6 percent in comparison to the 2007 LTCH PPS rate year (that is, LTCHs with less than 49 beds). As noted above, the projected percent increase in estimated payments per discharge from the 2007 LTCH PPS rate year to the 2008 LTCH PPS rate year is largely attributable to the approach discussed for the SSO policy, the proposed changes in the area wage adjustment, and the proposed increase in the outlier fixed-loss amount (as explained above).

Estimated payments per discharge for the 2008 LTCH PPS rate year for LTCHs with 0–24 beds are projected to decrease the most in comparison to the 2007 LTCH PPS rate year (1.6 percent; see Table 9), followed by LTCHs with 25–49 beds (1.1 percent; see Table 9). This higher than average decrease in estimated payments per discharge for LTCHs with less than 49 beds (that is, LTCHs in the 0–24 bed size category and LTCHs in the 25–49 bed size category) is largely due to the proposed changes to the area wage adjustment and the approach discussed for the SSO policy. Specifically, the majority of LTCHs with 49 beds or less are located in areas where the proposed RY 2008 wage index value is less than the RY 2007 wage index value. In addition, the majority (over 80 percent) of LTCHs with 49 beds or less are located in areas where the proposed RY 2008 wage index is less than 1.0. Furthermore, many of the LTCHs with less than 25 beds have a larger than average percentage of SSO cases, and therefore, are expected to experience a larger than average decrease in estimated payments

per discharge due to the approach discussed for the SSO policy.

We project that LTCHs with greater than 200 beds would have a slight increase in estimated 2008 LTCH PPS rate year payments per discharge in comparison to the 2007 LTCH PPS rate year (0.4 percent; see Table 9). This slight increase in estimated payments per discharge for LTCHs with greater than 200 beds is primarily due to the proposed changes to the area wage adjustment. This is because the majority of these LTCHs are located in areas where the proposed RY 2008 wage index value is greater than the RY 2007 wage index value, and because 12 of the 13 LTCHs with greater than 200 beds are located in an area where the proposed RY 2008 wage index value is greater than 1.0 (as described above).

5. Effect on the Medicare Program

Based on actuarial projections, an estimate of Medicare spending (total estimated Medicare program payments) for LTCH services over the next 5 years based on current LTCH PPS policy (as established in previous LTCH PPS final rules) is shown in Table 4 in section IV.D.5. of the preamble of this proposed rule. As noted we project that the provisions of this proposed rule (including the approach discussed for the SSO policy), would result in a decrease in estimated aggregate LTCH PPS payments in RY 2008 of about $117 million (or about 2.9 percent) for the 369 LTCHs in our database, as explained in greater detail above in section XVI.A. of this regulatory impact analysis.

Consistent with the statutory requirement for BN, as we discussed in the August 30, 2002 final rule that implemented the LTCH PPS, in developing the LTCH PPS, we intended estimated aggregate payments under the LTCH PPS in FY 2003 be projected to equal the estimated aggregate payments that would have been made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the BN calculations for determining the FY 2003 standard Federal rate uses the best available data and necessarily reflects assumptions. As we collect data from LTCHs, we will monitor payments and evaluate the ultimate accuracy of the assumptions used in the BN calculations (that is, inflation factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS). As discussed in section IV.D.6. of this proposed rule, we still do not have sufficient new cost report and claims data generated under the LTCH PPS to enable us to conduct a comprehensive reevaluation of our FY 2003 BN calculation at this time.

Section 123 of the BBRA and section 307 of the BIPA provide the Secretary with extremely broad authority in developing the LTCH PPS, including the authority for appropriate adjustments. In accordance with this broad authority, we may discuss in a future proposed rule a possible one-time prospective adjustment to the LTCH PPS rates under § 412.523(d)(3) on or before July 1, 2008, so that the effect of any significant differences between actual payments and estimated payments for the first year of the LTCH PPS is not perpetuated in the LTCH PPS payment rates for future years.

6. Effect on Medicare Beneficiaries

Under the LTCH PPS, hospitals receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the LTCH PPS, but we expect that paying prospectively for LTCH services would enhance the efficiency of the Medicare program.

C. Impact of Other Proposed Policy Changes

1. Effects of Proposed Policy Expansion of the Special Payment Provisions for LTCH HwHs and LTCH Satellites to Certain Situations Not Presently Covered by Existing § 412.534 for Subclause (I) LTCHs

In section V.B. of the preamble to this proposed rule, we are proposing to revise § 412.534 and add a § 412.536 to expand the existing payment provision for co-located LTCHs (HwHs and satellites of LTCHs) to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs. Under the existing policy, which was finalized for FY 2004, a payment adjustment is applied to those discharges from co-located LTCHs that were admitted from host hospitals that are in excess of a specified threshold unless those patients had reached HCO status at the referring hospital. Following a 4-year phase-in of this payment adjustment, for cost reporting periods beginning during FY 2008, the threshold is 25 percent or an applicable percentage established under the regulation that takes into account the particular circumstances of rural, urban single, or MSA dominant hospitals. Specifically, at existing § 412.534, we have provided that under the LTCH PPS, Medicare will pay the lesser of an amount otherwise payable under subpart O of 42 CFR part 412 or a LTCH PPS payment amount equivalent to what would have been paid under the IPPS for those discharges that were not HCOs from the referring hospital and that exceed 25 percent (or the applicable percentage) of the LTCH or LTCH satellite's Medicare discharges for any cost reporting period (69 FR 49191 through 49213). We originally established this payment adjustment because our data suggested that in many cases, hospitals were prematurely shifting patients to co-located LTCHs, and therefore, that we were generating a Medicare payment to the first hospital (generally an acute care hospital paid under the IPPS) and also an additional Medicare payment under the LTCH PPS to an LTCH for what was, in essence, one episode of care. Consequently, we believed that in such circumstances co-located LTCHs were functioning as step-down units of their host hospitals, a configuration which is not permitted under section 1886(d)(1)(B) of the Act, which provides for the establishment of rehabilitation and psychiatric units of acute care hospitals but does not allow LTCH units.

As detailed in section V.B. of the preamble of this proposed rule, our data suggests that many of our concerns regarding patient shifting between co-located providers also pertain to those LTCHs that are not co-located with other hospitals. The RY 2005 LTCH discharges from the MedPAR files indicate that only about 12 percent of the then 174 free-standing LTCHs admitted 25 percent or less of their Medicare discharges from an individual acute care hospital; for about 37 percent of those freestanding LTCHs, the percentage was between 25 and 50 percent; for about 34 percent, it was between 50 and 75 percent; and for about 17 percent of those free-standing LTCHs, it was between 75 and 100 percent of their Medicare discharges were admitted from one acute care hospital. In addition, the RY 2005 LTCH discharges from the MedPAR files indicate that for over 50 percent of all LTCHs, at least 50 percent of their discharges are for patients admitted from an individual acute care hospital. Based on this data, as discussed in section V.B. of this proposed rule, we have proposed to expand this described payment adjustment at existing § 412.534 to apply equally to certain situations not presently covered by existing § 412.534 for subclause (I) LTCHs beginning with cost reporting periods starting in RY 2008. Under this proposed policy, if any subclause (I) LTCH's or satellite facility's discharges that had been admitted from *any* non-

co-located referring hospital (under proposed § 412.536) or from a co-located host (under the proposed revision to § 412.534) exceed 25 percent (or the applicable percentage) for the LTCH's cost reporting period, an adjusted payment would be made at the lesser of the otherwise payable amount under the LTCH PPS or the LTCH PPS payment amount that would be equivalent to what Medicare would otherwise pay under the IPPS.

It is our intent that the proposed revisions would discourage inappropriate patient shifting to LTCHs before the referring hospital delivers a full episode of patient care. To the extent that LTCHs change their behaviors because this proposed policy reduces the financial incentives for certain situations not presently covered by existing § 412.534 to admit patients prematurely discharged from other hospitals, we believe that there would be savings to the Medicare program. Specifically, as under the existing policy for co-located LTCHs at existing § 412.534, the proposed payment adjustment would not apply to either those subclause (I) LTCH discharges admitted from non-co-located referring hospitals (under proposed § 412.536) or those subclause (I)LTCH HwH or satellite discharges admitted from co-located host hospitals (under the proposed revision to § 412.534) that have already reached HCO status.

At this time, based on the most recent LTCH claims data available and assuming no change in LTCH behavior if this proposed policy were implemented, we estimate that the proposed extension of the 25 percent (or applicable percentage) threshold at existing § 412.534 to certain situations not presently covered by existing § 412.534 subclause (I) LTCHs would result in savings of $90 million to the Medicare program (or 2.2 percent decrease in estimated aggregate LTCH PPS payments) in RY 2008. (As noted above, this estimated $90 million impact is in addition to the estimated impact of the proposed payment rate and policy changes discussed in section XVI.B.4. of this regulatory impact analysis. Thus, the projected 2.2 percent decrease in estimated aggregate LTCH PPS payments due to this proposed policy is included in the 2.9 percent decrease in estimated aggregate LTCH PPS payments projected for all of the provisions of this proposed rule, as explained in greater detail above in section XVI.A. of this regulatory impact analysis.) As discussed above in this section, because we believe that this proposed policy would discourage inappropriate patient shifting to LTCHs before the non-co-located referring hospital or co-located host delivered a full episode of patient care and because we believe that this proposed policy would result in appropriate Medicare payments under the LTCH PPS, we do not believe that there would be an adverse financial impact on LTCHs, nor would there be an adverse impact on Medicare beneficiaries' access to care.

2. Effects of Proposed Policy Change Relating to Payment for Direct Graduate Medical Education (GME)

In section XII. of the preamble of this proposed rule, with respect to the rules that hospitals must meet to count residents training in nonhospital settings for indirect medical education (IME) and direct GME payment purposes, we are proposing to revise § 413.75(b) to revise the definition of ''all or substantially all of the costs for the training program in the nonhospital setting.'' The revised definition would be at least 90 percent of the total cost of the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries attributable to direct GME. This differs from the current definition of ''all or substantially all of the costs for the training program in the nonhospital setting'' which requires that, to count FTE residents training in nonhospital setting, hospitals must pay for 100 percent of the residents' salaries and fringe benefits, as well as the portion of the actual cost of the teaching physicians' salary and fringe benefits attributable to GME activities during the time the residents are training in the nonhospital site. In addition, under the proposed definition of ''all or substantially all'' of the costs, in response to hospitals' concerns regarding the difficulty of acquiring actual salary data from teaching physicians to document the actual cost of the teaching physicians' time spent on GME activities, we are proposing to allow hospitals to use certain proxy information, such as national average physician compensation amounts, to calculate the cost of the teaching physicians' time spent in GME activities in nonhospital sites.

We believe that the administrative burden on hospitals related to calculating and documenting that they are paying for all or substantially all of the costs of residency training in nonhospital sites would be significantly reduced, if not eliminated, under our proposal. If the proposed changes are *not* made, and we continue to require that hospitals provide extensive documentation that they are paying for ''all'' of the costs of the training program in the nonhospital setting, we understand that there is industry concern that hospitals may significantly reduce the amount of training occurring in nonhospital settings, and may transfer that residency training back to hospitals. We further note that the Congress intended to encourage the shift of training to nonhospital settings and we believe this proposed policy change could facilitate further shifts to nonhospital settings. Since we are *not* proposing a change that would impact the aggregate amount of residency training that will occur, and Medicare would continue to pay for residency training occurring in hospitals, overall Medicare payments for residency training as a result of this proposal will remain constant.

D. Accounting Statement

As discussed in section XVI.A.1. of this regulatory impact analysis, including the approach discussed for addressing our concerns with the existing SSO policy (presented in section V.A.2. of the preamble of this proposed rule) in the impact analysis of this proposed rule results in a decrease in estimated aggregate payments of $117 million (or about 2.9 percent) for the 369 LTCHs in our database. Therefore, as required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf),* in Table 10, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 10 provides our best estimate of the proposed decrease in Medicare payments under the LTCH PPS as a result of the provisions presented in this proposed rule based on the data for the 369 LTCHs in our database. All expenditures are classified as transfers to Medicare providers (that is, LTCHs).

TABLE 10.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2007 LTCH PPS RATE YEAR TO THE 2008 LTCH PPS RATE YEAR

[In millions]

Category	Transfers
Annualized Monetized Transfers	Negative transfer—Estimated decrease in expenditures: $117.*
From Whom To Whom?	Federal Government To LTCH Medicare Providers.

*As noted above and as discussed in greater detail above in section XVI.A.1. of this regulatory impact analysis, we have included the approach discussed for addressing our concerns with the existing SSO policy in the impact analysis of this proposed rule, which is projected to result in a $117 million decrease in estimated aggregate LTCH PPS payments from RY 2007 to RY 2008. However, we note that in absence of including such an approach, we estimate that the estimated impact of the provisions of this proposed rule are projected to result in an $80 million decrease in estimated aggregate LTCH PPS payments from RY 2007 to RY 2008.

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

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services would amend 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and section 124 of Pub. L. 106–113 (113 Stat. 1501A–332).

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

2. Section 412.22 is amended by adding paragraphs (h)(3)(i) and (ii) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(h) * * *

(3) * * *

(i) Any hospital structured as a satellite facility on September 30, 1999, and excluded from the prospective payment systems on that date, to the extent the hospital continues operating under the same terms and conditions, including the number of beds and square footage considered, for the purposes of Medicare participation and payment, to be part of the hospital, in effect on September 30, 1999; or

(ii) Any hospital excluded from the prospective payment systems under § 412.23(e)(2)(ii).

* * * * *

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

3. Section 412.105 is amended by revising paragraph (f)(1)(ii)(C) to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(C) Effective for discharges occurring on or after October 1, 1997, the time spent by a resident in a nonhospital setting in patient care activities, as defined in § 413.75(b) of this subchapter, under an approved medical residency training program is counted towards the determination of full-time equivalency if the criteria set forth in § 413.78(c), (d), (e), or (f) of this subchapter, as applicable, are met.

* * * * *

Subpart O—Prospective Payment System for Long-Term Care Hospitals

4. Section 412.517 is amended by —

A. Redesignating the introductory text and paragraphs (a), (b), (c), and (d) as paragraphs (a) introductory text, (a)(1), (a)(2), (a)(3), and (a)(4), respectively.

B. Adding new paragraph (b).

The addition reads as follows:

§ 412.517 Revision of LTC–DRG group classifications and weighting factors.

* * * * *

(b) Beginning in FY 2008, the annual changes to the LTC–DRG classifications and recalibration of the weighting factors described in paragraph (a) are made in a budget neutral manner such that estimated aggregate LTCH PPS payments are not affected.

5. Section 412.523 is amended by adding new paragraph (c)(3)(iv) to read as follows:

§ 412.523 Methodology for calculating the Federal prospective payment rates.

* * * * *

(c) * * *

(3) * * *

(iv) *For long-term care hospital prospective payment system rate year beginning July 1, 2007 and ending June 30, 2008.* The standard Federal rate for long-term care hospital prospective payment system rate year beginning July 1, 2007 and ending June 30, 2008 is the standard Federal rate for the previous long-term care hospital prospective payment system rate year updated by 0.71 percent. The standard Federal rate is adjusted, as appropriate, as described in paragraph (d) of this section.

* * * * *

6. Section 412.534 is amended by—

A. Revising paragraph (b).

B. Adding paragraph (h).

The revision and addition read as follows:

§ 412.534 Special payment provisions for long-term care hospitals within hospitals and satellites of long-term care hospitals.

* * * * *

(b) *Patients admitted from hospitals not located in the same building or on the same campus as the long-term care hospital or long-term care hospital satellite.* Payments to the long-term care hospital for patients admitted to the long-term care hospital to a satellite of the long-term care hospital from another hospital that is not the co-located hospital are made under the rules in this subpart with no adjustment under this section. For cost reporting periods beginning on or after July 1, 2007, payments to the long-term care hospital or long-term care hospital satellite facility for patients admitted to the LTCH hospital or LTCH satellite facility of the long-term care hospital from another hospital that is not the co-

located hospital are subject to the provisions in § 412.536.

* * * * *

(h) *Effective date of policies in this section.* The policies set forth in this section apply to discharges occurring in cost reporting periods beginning on or after July 1, 2007 from long-term care hospitals as described in § 412.23(e)(2)(i) that meet criteria in § 412.22(f)and satellite facilities of long-term care hospitals as described at § 412.22(h)(3)(i).

7. Section 412.536 is added to read as follows:

§ 412.536 Special payment provisions for long-term care hospitals and satellites not co-located with other hospitals.

(a) *Scope.* For cost reporting periods beginning on or after July 1, 2007, the policies set forth in this section apply to discharges from long-term care hospitals as described in § 412.23(e)(2)(i) and satellite facilities of long-term care hospitals described in § 412.22(h), including satellite facilities of long-term care hospitals described in (h)(3)(i) but excluding satellite facilities described in (h)(3)(ii).

(b) For cost reporting periods beginning on or after July 1, 2007, payments for discharged patients admitted from a hospital not located in the same building or on the same campus as the long-term care hospital or long-term care hospital satellite facility will be made under either paragraph (b)(1) or paragraph (b)(2) of this section.

(1) Except as provided in paragraphs (c), (d) or (f) of this section, for any cost reporting period beginning on or after July 1, 2007 in which a long-term care hospital or a long-term care hospital satellite facility has a discharged Medicare inpatient population of whom no more than 25 percent were admitted to the hospital or the satellite facility from any individual hospital, payments for the Medicare discharges admitted from that hospital are made under the rules at § 412.500 through § 412.541 in this subpart with no adjustment under this section.

(2) Except as provided in paragraph (c), (d), or (f) of this section, for any cost reporting period beginning on or after July 1, 2007 in which a long-term care hospital or long-term care hospital satellite facility has a discharged Medicare inpatient population of whom more than 25 percent were admitted to the hospital or satellite facility from any individual hospital, payment for the Medicare discharges who are admitted from that hospital and who cause the long-term care hospital or satellite facility to exceed the 25 percent threshold for discharged patients who have been admitted from that referring hospital, are determined at the lesser of the amount otherwise payable under this subpart or the amount payable under this subpart that is equivalent, as set forth in paragraph (e) of this section, to the amount that would be determined under the rules at Subpart A, § 412.1(a). Payments for the remainder of the long-term care hospital's or satellite facility's patients admitted from that referring hospital are made under the rules in this subpart at § 412.500 through § 412.541 with no adjustment under this section.

(3) In determining the percentage of Medicare discharges admitted to the long-term care hospital or long-term care hospital satellite facility from any referring hospital under paragraphs (b)(1) and (b)(2) of this section, patients on whose behalf a Medicare outlier payment was made to the referring hospital are not counted towards the 25 percent threshold from that referring hospital.

(c) *Special treatment of rural hospitals.* (1) Subject to paragraph (f) of this section, in the case of a long-term care hospital or long-term care hospital satellite facility that is located in a rural area as defined in § 412.64(b)(1)(ii)(C) that has a discharged Medicare inpatient population of whom more than 50 percent were admitted to the long-term care hospital or long-term care hospital satellite facility from a hospital, payment for the Medicare discharges who are admitted from that hospital and who cause the long-term care hospital or satellite facility to exceed the 50 percent threshold for Medicare discharges is determined at the lesser of the amount otherwise payable under this subpart or the amount payable under this subpart that is equivalent, as set forth in paragraph (e) of this section, to the amount that is otherwise payable under subpart A, § 412.1(a). Payments for the remainder of the long-term care hospital's or long-term care hospital satellite facility's Medicare discharges admitted from the referring hospital are made under the rules in this subpart at § 412.500 through § 412.541 with no adjustment under this section.

(2) In determining the percentage of Medicare discharges admitted from the referring hospital under paragraph (c)(1) of this section, patients on whose behalf a Medicare outlier payment was made at the referring hospital are not counted toward the 50 percent threshold.

(d) *Special treatment of urban single or MSA dominant hospitals.* (1) Subject to paragraph (f) of this section, in the case of a long-term care hospital or long-term care hospital satellite facility that admits Medicare patients from the only other hospital in the MSA or from a MSA dominant hospital as defined in paragraph (d)(4) of this section, for any cost reporting period beginning on or after July 1, 2007, in which the long-term care hospital or satellite facility has a discharged Medicare inpatient population of whom more than the percentage calculated under paragraph (d)(2) of this section were admitted to the hospital from the urban single or MSA-dominant referring hospital, payment for the Medicare discharges who are admitted from the referring hospital and who cause the long-term care hospital or long-term care hospital satellite facility to exceed the applicable threshold for Medicare discharges who have been admitted from the referring hospital is the lesser of the amount otherwise payable under this subpart or the amount under this subpart that is equivalent, as set forth in paragraph (e) of this section, to the amount that otherwise would be determined under Subpart A, § 412.1(a). Payments for the remainder of the long-term care hospital's or satellite facility's Medicare discharges admitted from that referring hospital are made under the rules in this subpart at § 412.500 through § 412.541 with no adjustment under this section.

(2) For purposes of paragraph (d)(1) of this section, the percentage used is the percentage of total Medicare discharges in the Metropolitan Statistical Area (MSA) in which the hospital is located that are from the referring hospital for the cost reporting period for which the adjustment was made, but in no case is less than 25 percent or more than 50 percent.

(3) In determining the percentage of patients admitted from the referring hospital under paragraph (d)(1) of this section, patients on whose behalf a Medicare outlier payment was made at the referring hospital are not counted toward the applicable threshold.

(4) For purposes of this paragraph, an ''MSA-dominant hospital'' is a hospital that has discharged more than 25 percent of the total hospital Medicare discharges in the MSA in which the hospital is located.

(e) *Calculation of rates.* (1) *Calculation of long-term care hospital prospective payment system amount.* CMS calculates an amount payable under subpart O equivalent to an amount that would otherwise be paid under the hospital inpatient prospective payment system. The amount is based on the sum of the applicable hospital inpatient prospective payment system operating standardized amount and capital Federal rate in effect at the time of the long-term care hospital discharge.

(2) *Operating inpatient prospective payment system standardized amount.*

The hospital inpatient prospective payment system operating standardized amount—

(i) Is adjusted for the applicable hospital inpatient prospective payment system DRG weighting factors;

(ii) Is adjusted for different area wage levels based on the geographic classifications set forth at § 412.64(b)(1)(ii)(A) through (C) and the applicable hospital inpatient prospective payment system labor-related share, using the applicable hospital inpatient prospective payment system wage index value for non-reclassified hospitals. For long-term care hospitals located in Alaska and Hawaii, this amount is also adjusted by the applicable hospital inpatient prospective payment system cost of living adjustment factors;

(iii) Includes, where applicable, adjustments for indirect medical education costs and for the costs of serving a disproportionate share of low-income patients.

(3) *Hospital inpatient prospective payment system capital Federal rate.* The hospital inpatient prospective payment system capital Federal rate—

(i) Is adjusted for the applicable hospital inpatient prospective payment system DRG weighting factors;

(ii) Is adjusted by the applicable geographic adjustment factors, including local cost variation based on the applicable geographic classifications set forth at § 412.64(b)(1)(ii)(A) through (C) and the applicable full hospital inpatient prospective payment system wage index value for non-reclassified hospitals, applicable large urban location and cost of living adjustment factors for long-term care hospitals for Alaska and Hawaii, if applicable;

(iii) Includes, where applicable, capital inpatient prospective payment system adjustments for indirect medical education costs and the costs of serving a disproportionate share of low-income patients.

(4) *High cost outlier.* An additional payment for high cost outlier cases is based on the fixed loss amount established for the hospital inpatient prospective payment system.

(f) *Transition period for long-term care hospitals and long-term care hospital satellite facilities paid under this subpart.* (1) In the case of a long-term care hospital or a long-term care hospital satellite facility that is paid under the provisions of this subpart, for cost reporting periods beginning on or after July 1, 2007, the amount paid is based on the following:

(2) For long term care hospitals or long term care hospital satellite facilities with cost reporting period beginning on or after July 1, 2007, and before October 1, 2007, the percentage of Medicare discharges admitted from the referring hospital with no payment adjustment, may not exceed the lesser of the percentage of the long term care hospital or long-term care hospital satellite's Medicare discharges that were admitted from the referring hospital during the FY 2005 cost reporting period or 50 percent. In determining the percentage of Medicare discharges admitted from the referring hospital under this paragraph, patients on whose behalf a Medicare outlier payment was made at the referring hospital are not counted toward this threshold.

(3) For long term care hospitals or long term care hospital satellites with cost reporting periods beginning on or after October 1, 2007, the percentage of Medicare discharges admitted from any referring hospital with no payment adjustment, may not exceed 25 percent or the applicable percentage determined under paragraph (c) or (d) of this section.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

8. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); and sec. 124 of Pub. L. 106–133 (113 Stat. 1501A–332).

Subpart F—Specific Categories of Costs

9. Section 413.75(b) is amended by revising the definition ''all or substantially all of the costs for the training program in the nonhospital setting'' to read as follows:

§ 413.75 Direct GME payments: General requirements.

* * * * *

(b) * * *

* * * * *

All or substantially all of the costs for the training program in the nonhospital setting means—(1) Effective on or after January 1, 1999 and for cost reporting periods beginning before July 1, 2007, the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education (GME); and

(2) Effective for cost reporting periods beginning on or after July 1, 2007, at least 90 percent of the total of the costs of the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries attributable to direct GME.

* * * * *

10. Section 413.78 is amended by adding new paragraph (f) to read as follows:

§ 413.78 Direct GME payments: Determination of the total number of FTE residents

* * * * *

(f) For cost reporting periods beginning on or after July 1, 2007, the time residents spend in non-provider settings such as freestanding clinics, nursing homes, and physicians' offices in connection with approved programs may be included in determining the number of FTE residents the calculation of a hospital's resident count if the following conditions are met—

(1) The resident spends his or her time in patient care activities.

(2) The hospital must incur all or substantially all of the costs for the training program in the nonhospital setting(s) (in accordance with the definition under § 413.75(b)).

(3) The hospital must comply with one of the following:

(i) The hospital must document that it is paying for all or substantially all of the costs for the training program in a nonhospital setting(s) attributable to training that occurs during a month by the end of the third month following the month in which the training in the nonhospital site occurred; or

(ii) There is a written agreement between the hospital and the nonhospital site that states that the hospital will incur at least 90 percent of the total of the costs of the resident's salary and fringe benefits (and travel and lodging where applicable) while the resident is training in the nonhospital site and the portion of the cost of the teaching physician's salary attributable to direct GME. The written agreement must specify the total amount the hospital will incur, and must indicate the portion of this amount that reflects residents' salaries and fringe benefits (and travel and lodging where applicable), and the portion of this amount that reflects teaching physician compensation.

(4) The hospital is subject to the principles of community support and redistribution of costs as specified in § 413.81.

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

Dated: December 14, 2006.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: January 24, 2007.

Michael O. Leavitt,

Secretary.

Note: The following addenda will not appear in the Code of Federal Regulations.

Addendum A

Addendum A contains the tables referred to throughout the preamble to this proposed rule. The tables presented below are as follows:

Table 1: Proposed Long-Term Care Hospital Wage Index for Urban Areas for Discharges Occurring from July 1, 2007 through June 30, 2008.

Table 2: Proposed Long-Term Care Hospital Wage Index for Rural Areas for Discharges Occurring from July 1, 2007 through June 30, 2008.

Table 3: FY 2007 LTC–DRG Relative Weights, Geometric Average Length of Stay, and five-sixths of the Geometric Average Length of Stay (for Short-Stay Outlier Cases) (effective for discharges occurring on or after October 1, 2006 through September 30, 2007), and the IPPS Average Length of Stay plus one Standard Deviation (that could be used under the approach discussed for Short-Stay Outlier policy). (**Note:** The first four columns of this table are the same information provided in Table 11 of the FY 2007 IPPS final rule (71 FR 48321 through 48320), which has been reprinted here for convenience. The fifth column of this table was added to provide information on the approach discussed for the short-stay outlier policy, discussed in section VI.A.2. of the preamble of this proposed rule.)

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
10180	Abilene, TX	0.8000	0.8400
	Callahan County, TX.		
	Jones County, TX.		
	Taylor County, TX.		
10380	Aguadilla-Isabela-San Sebastián, PR	0.3915	0.5132
	Aguada Municipio, PR.		
	Aguadilla Municipio, PR.		
	Añasco Municipio, PR.		
	Isabela Municipio, PR.		
	Lares Municipio, PR.		
	Moca Municipio, PR.		
	Rincón Municipio, PR.		
	San Sebastián Municipio, PR.		
10420	Akron, OH	0.8654	0.8923
	Portage County, OH.		
	Summit County, OH.		
10500	Albany, GA	0.8991	0.9193
	Baker County, GA.		
	Dougherty County, GA.		
	Lee County, GA.		
	Terrell County, GA.		
	Worth County, GA.		
10580	Albany-Schenectady-Troy, NY	0.8720	0.8976
	Albany County, NY.		
	Rensselaer County, NY.		
	Saratoga County, NY.		
	Schenectady County, NY.		
	Schoharie County, NY.		
10740	Albuquerque, NM	0.9458	0.9566
	Bernalillo County, NM.		
	Sandoval County, NM.		
	Torrance County, NM.		
	Valencia County, NM.		
10780	Alexandria, LA	0.8006	0.8405
	Grant Parish, LA.		
	Rapides Parish, LA.		
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9947	0.9958
	Warren County, NJ.		
	Carbon County, PA.		
	Lehigh County, PA.		
	Northampton County, PA.		
11020	Altoona, PA	0.8812	0.9050
	Blair County, PA.		
11100	Amarillo, TX	0.9169	0.9335
	Armstrong County, TX.		
	Carson County, TX.		
	Potter County, TX.		
	Randall County, TX.		
11180	Ames, IA	0.9760	0.9808
	Story County, IA.		
11260	Anchorage, AK	1.2023	1.1618
	Anchorage Municipality, AK.		
	Matanuska-Susitna Borough, AK.		
11300	Anderson, IN	0.8681	0.8945
	Madison County, IN.		
11340	Anderson, SC	0.9017	0.9214

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Anderson County, SC.		
11460	Ann Arbor, MI	1.0826	1.0661
	Washtenaw County, MI.		
11500	Anniston-Oxford, AL	0.7770	0.8216
	Calhoun County, AL.		
11540	Appleton, WI	0.9455	0.9564
	Calumet County, WI.		
	Outagamie County, WI.		
11700	Asheville, NC	0.9216	0.9373
	Buncombe County, NC.		
	Haywood County, NC.		
	Henderson County, NC.		
	Madison County, NC.		
12020	Athens-Clarke County, GA	0.9856	0.9885
	Clarke County, GA.		
	Madison County, GA.		
	Oconee County, GA.		
	Oglethorpe County, GA.		
12060	Atlanta-Sandy Springs-Marietta, GA	0.9762	0.9810
	Barrow County, GA.		
	Bartow County, GA.		
	Butts County, GA.		
	Carroll County, GA.		
	Cherokee County, GA.		
	Clayton County, GA.		
	Cobb County, GA.		
	Coweta County, GA.		
	Dawson County, GA.		
	DeKalb County, GA.		
	Douglas County, GA.		
	Fayette County, GA.		
	Forsyth County, GA.		
	Fulton County, GA.		
	Gwinnett County, GA.		
	Haralson County, GA.		
	Heard County, GA.		
	Henry County, GA.		
	Jasper County, GA.		
	Lamar County, GA.		
	Meriwether County, GA.		
	Newton County, GA.		
	Paulding County, GA.		
	Pickens County, GA.		
	Pike County, GA.		
	Rockdale County, GA.		
	Spalding County, GA.		
	Walton County, GA.		
12100	Atlantic City, NJ	1.1831	1.1465
	Atlantic County, NJ.		
12220	Auburn-Opelika, AL	0.8096	0.8477
	Lee County, AL.		
12260	Augusta-Richmond County, GA-SC	0.9667	0.9734
	Burke County, GA.		
	Columbia County, GA.		
	McDuffie County, GA.		
	Richmond County, GA.		
	Aiken County, SC.		
	Edgefield County, SC.		
12420	Austin-Round Rock, TX	0.9344	0.9475
	Bastrop County, TX.		
	Caldwell County, TX.		
	Hays County, TX.		
	Travis County, TX.		
	Williamson County, TX.		
12540	Bakersfield, CA	1.0725	1.0580
	Kern County, CA.		
12580	Baltimore-Towson, MD	1.0088	1.0070
	Anne Arundel County, MD.		
	Baltimore County, MD.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Carroll County, MD.		
	Harford County, MD.		
	Howard County, MD.		
	Queen Anne's County, MD.		
	Baltimore City, MD.		
12620	Bangor, ME	0.9711	0.9769
	Penobscot County, ME.		
12700	Barnstable Town, MA	1.2539	1.2031
	Barnstable County, MA.		
12940	Baton Rouge, LA	0.8084	0.8467
	Ascension Parish, LA.		
	East Baton Rouge Parish, LA.		
	East Feliciana Parish, LA.		
	Iberville Parish, LA.		
	Livingston Parish, LA.		
	Pointe Coupee Parish, LA.		
	St. Helena Parish, LA.		
	West Baton Rouge Parish, LA.		
	West Feliciana Parish, LA.		
12980	Battle Creek, MI	0.9762	0.9810
	Calhoun County, MI.		
13020	Bay City, MI	0.9251	0.9401
	Bay County, MI.		
13140	Beaumont-Port Arthur, TX	0.8595	0.8876
	Hardin County, TX.		
	Jefferson County, TX.		
	Orange County, TX.		
13380	Bellingham, WA	1.1104	1.0883
	Whatcom County, WA.		
13460	Bend, OR	1.0743	1.0594
	Deschutes County, OR.		
13644	Bethesda-Gaithersburg-Frederick, MD	1.0903	1.0722
	Frederick County, MD.		
	Montgomery County, MD.		
13740	Billings, MT	0.8712	0.8970
	Carbon County, MT.		
	Yellowstone County, MT.		
13780	Binghamton, NY	0.8786	0.9029
	Broome County, NY.		
	Tioga County, NY.		
13820	Birmingham-Hoover, AL	0.8894	0.9115
	Bibb County, AL.		
	Blount County, AL.		
	Chilton County, AL.		
	Jefferson County, AL.		
	St. Clair County, AL.		
	Shelby County, AL.		
	Walker County, AL.		
13900	Bismarck, ND	0.7240	0.7792
	Burleigh County, ND.		
	Morton County, ND.		
13980	Blacksburg-Christiansburg-Radford, VA	0.8213	0.8570
	Giles County, VA.		
	Montgomery County, VA.		
	Pulaski County, VA.		
	Radford City, VA.		
14020	Bloomington, IN	0.8533	0.8826
	Greene County, IN.		
	Monroe County, IN.		
	Owen County, IN.		
14060	Bloomington-Normal, IL	0.8944	0.9155
	McLean County, IL.		
14260	Boise City-Nampa, ID	0.9401	0.9521
	Ada County, ID.		
	Boise County, ID.		
	Canyon County, ID.		
	Gem County, ID.		
	Owyhee County, ID.		
14484	Boston-Quincy, MA	1.1679	1.1343

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Norfolk County, MA.		
	Plymouth County, MA.		
	Suffolk County, MA.		
14500	Boulder, CO	1.0350	1.0280
	Boulder County, CO.		
14540	Bowling Green, KY	0.8148	0.8518
	Edmonson County, KY.		
	Warren County, KY.		
14740	Bremerton-Silverdale, WA	1.0913	1.0730
	Kitsap County, WA.		
14860	Bridgeport-Stamford-Norwalk, CT	1.2659	1.2127
	Fairfield County, CT.		
15180	Brownsville-Harlingen, TX	0.9430	0.9544
	Cameron County, TX.		
15260	Brunswick, GA	1.0164	1.0131
	Brantley County, GA.		
	Glynn County, GA.		
	McIntosh County, GA.		
15380	Buffalo-Niagara Falls, NY	0.9424	0.9539
	Erie County, NY.		
	Niagara County, NY.		
15500	Burlington, NC	0.8674	0.8939
	Alamance County, NC.		
15540	Burlington-South Burlington, VT	0.9474	0.9579
	Chittenden County, VT.		
	Franklin County, VT.		
	Grand Isle County, VT.		
15764	Cambridge-Newton-Framingham, MA	1.0970	1.0776
	Middlesex County, MA.		
15804	Camden, NJ	1.0392	1.0314
	Burlington County, NJ.		
	Camden County, NJ.		
	Gloucester County, NJ.		
15940	Canton-Massillon, OH	0.9031	0.9225
	Carroll County, OH.		
	Stark County, OH.		
15980	Cape Coral-Fort Myers, FL	0.9342	0.9474
	Lee County, FL.		
16180	Carson City, NV	1.0025	1.0020
	Carson City, NV.		
16220	Casper, WY	0.9145	0.9316
	Natrona County, WY.		
16300	Cedar Rapids, IA	0.8888	0.9110
	Benton County, IA.		
	Jones County, IA.		
	Linn County, IA.		
16580	Champaign-Urbana, IL	0.9644	0.9715
	Champaign County, IL.		
	Ford County, IL.		
	Piatt County, IL.		
16620	Charleston, WV	0.8542	0.8834
	Boone County, WV.		
	Clay County, WV.		
	Kanawha County, WV.		
	Lincoln County, WV.		
	Putnam County, WV.		
16700	Charleston-North Charleston, SC	0.9145	0.9316
	Berkeley County, SC.		
	Charleston County, SC.		
	Dorchester County, SC.		
16740	Charlotte-Gastonia-Concord, NC-SC	0.9554	0.9643
	Anson County, NC.		
	Cabarrus County, NC.		
	Gaston County, NC.		
	Mecklenburg County, NC.		
	Union County, NC.		
	York County, SC.		
16820	Charlottesville, VA	1.0125	1.0100
	Albemarle County, VA.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Fluvanna County, VA.		
	Greene County, VA.		
	Nelson County, VA.		
	Charlottesville City, VA.		
16860	Chattanooga, TN-GA	0.8948	0.9158
	Catoosa County, GA.		
	Dade County, GA.		
	Walker County, GA.		
	Hamilton County, TN.		
	Marion County, TN.		
	Sequatchie County, TN.		
16940	Cheyenne, WY	0.9060	0.9248
	Laramie County, WY.		
16974	Chicago-Naperville-Joliet, IL	1.0751	1.0601
	Cook County, IL.		
	DeKalb County, IL.		
	DuPage County, IL.		
	Grundy County, IL.		
	Kane County, IL.		
	Kendall County, IL.		
	McHenry County, IL.		
	Will County, IL.		
17020	Chico, CA	1.1053	1.0842
	Butte County, CA.		
17140	Cincinnati-Middletown, OH-KY-IN	0.9601	0.9681
	Dearborn County, IN.		
	Franklin County, IN.		
	Ohio County, IN.		
	Boone County, KY.		
	Bracken County, KY.		
	Campbell County, KY.		
	Gallatin County, KY.		
	Grant County, KY.		
	Kenton County, KY.		
	Pendleton County, KY.		
	Brown County, OH.		
	Butler County, OH.		
	Clermont County, OH.		
	Hamilton County, OH.		
	Warren County, OH.		
17300	Clarksville, TN-KY	0.8436	0.8749
	Christian County, KY.		
	Trigg County, KY.		
	Montgomery County, TN.		
	Stewart County, TN.		
17420	Cleveland, TN	0.8109	0.8487
	Bradley County, TN.		
	Polk County, TN.		
17460	Cleveland-Elyria-Mentor, OH	0.9400	0.9520
	Cuyahoga County, OH.		
	Geauga County, OH.		
	Lake County, OH.		
	Lorain County, OH.		
	Medina County, OH.		
17660	Coeur d'Alene, ID	0.9344	0.9475
	Kootenai County, ID.		
17780	College Station-Bryan, TX	0.9045	0.9236
	Brazos County, TX.		
	Burleson County, TX.		
	Robertson County, TX.		
17820	Colorado Springs, CO	0.9701	0.9761
	El Paso County, CO.		
	Teller County, CO.		
17860	Columbia, MO	0.8542	0.8834
	Boone County, MO.		
	Howard County, MO.		
17900	Columbia, SC	0.8933	0.9146
	Calhoun County, SC.		
	Fairfield County, SC.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Kershaw County, SC.		
	Lexington County, SC.		
	Richland County, SC.		
	Saluda County, SC.		
17980	Columbus, GA-AL	0.8239	0.8591
	Russell County, AL.		
	Chattahoochee County, GA.		
	Harris County, GA.		
	Marion County, GA.		
	Muscogee County, GA.		
18020	Columbus, IN	0.9318	0.9454
	Bartholomew County, IN.		
18140	Columbus, OH	1.0107	1.0086
	Delaware County, OH.		
	Fairfield County, OH.		
	Franklin County, OH.		
	Licking County, OH.		
	Madison County, OH.		
	Morrow County, OH.		
	Pickaway County, OH.		
	Union County, OH.		
18580	Corpus Christi, TX	0.8564	0.8851
	Aransas County, TX.		
	Nueces County, TX.		
	San Patricio County, TX.		
18700	Corvallis, OR	1.1546	1.1237
	Benton County, OR.		
19060	Cumberland, MD-WV	0.8446	0.8757
	Allegany County, MD.		
	Mineral County, WV.		
19124	Dallas-Plano-Irving, TX	1.0075	1.0060
	Collin County, TX.		
	Dallas County, TX.		
	Delta County, TX.		
	Denton County, TX.		
	Ellis County, TX.		
	Hunt County, TX.		
	Kaufman County, TX.		
	Rockwall County, TX.		
19140	Dalton, GA	0.9093	0.9274
	Murray County, GA.		
	Whitfield County, GA.		
19180	Danville, IL	0.9266	0.9413
	Vermilion County, IL.		
19260	Danville, VA	0.8451	0.8761
	Pittsylvania County, VA.		
	Danville City, VA.		
19340	Davenport-Moline-Rock Island, IA-IL	0.8846	0.9077
	Henry County, IL.		
	Mercer County, IL.		
	Rock Island County, IL.		
	Scott County, IA.		
19380	Dayton, OH	0.9037	0.9230
	Greene County, OH.		
	Miami County, OH.		
	Montgomery County, OH.		
	Preble County, OH.		
19460	Decatur, AL	0.8159	0.8527
	Lawrence County, AL.		
	Morgan County, AL.		
19500	Decatur, IL	0.8172	0.8538
	Macon County, IL.		
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9263	0.9410
	Volusia County, FL.		
19740	Denver-Aurora, CO	1.0930	1.0744
	Adams County, CO.		
	Arapahoe County, CO.		
	Broomfield County, CO.		
	Clear Creek County, CO.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Denver County, CO.		
	Douglas County, CO.		
	Elbert County, CO.		
	Gilpin County, CO.		
	Jefferson County, CO.		
	Park County, CO.		
19780	Des Moines,-West Des Moines, IA	0.9214	0.9371
	Dallas County, IA.		
	Guthrie County, IA.		
	Madison County, IA.		
	Polk County, IA.		
	Warren County, IA.		
19804	Detroit-Livonia-Dearborn, MI	1.0281	1.0225
	Wayne County, MI.		
20020	Dothan, AL	0.7381	0.7905
	Geneva County, AL.		
	Henry County, AL.		
	Houston County, AL.		
20100	Dover, DE	0.9847	0.9878
	Kent County, DE.		
20220	Dubuque, IA	0.9133	0.9306
	Dubuque County, IA.		
20260	Duluth, MN-WI	1.0042	1.0034
	Carlton County, MN.		
	St. Louis County, MN.		
	Douglas County, WI.		
20500	Durham, NC	0.9826	0.9861
	Chatham County, NC.		
	Durham County, NC.		
	Orange County, NC.		
	Person County, NC.		
20740	Eau Claire, WI	0.9630	0.9704
	Chippewa County, WI.		
	Eau Claire County, WI.		
20764	Edison, NJ	1.1190	1.0952
	Middlesex County, NJ.		
	Monmouth County, NJ.		
	Ocean County, NJ.		
	Somerset County, NJ.		
20940	El Centro, CA	0.9076	0.9261
	Imperial County, CA.		
21060	Elizabethtown, KY	0.8697	0.8958
	Hardin County, KY.		
	Larue County, KY.		
21140	Elkhart-Goshen, IN	0.9426	0.9541
	Elkhart County, IN.		
21300	Elmira, NY	0.8240	0.8592
	Chemung County, NY.		
21340	El Paso, TX	0.9053	0.9242
	El Paso County, TX.		
21500	Erie, PA	0.8827	0.9062
	Erie County, PA.		
21604	Essex County, MA	1.0418	1.0334
	Essex County, MA.		
21660	Eugene-Springfield, OR	1.0876	1.0701
	Lane County, OR.		
21780	Evansville, IN-KY	0.9071	0.9257
	Gibson County, IN.		
	Posey County, IN.		
	Vanderburgh County, IN.		
	Warrick County, IN.		
	Henderson County, KY.		
	Webster County, KY.		
21820	Fairbanks, AK	1.1059	1.0847
	Fairbanks North Star Borough, AK.		
21940	Fajardo, PR	0.4036	0.5229
	Ceiba Municipio, PR.		
	Fajardo Municipio, PR.		
	Luquillo Municipio, PR.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
22020	Fargo, ND-MN	0.8250	0.8600
	Cass County, ND.		
	Clay County, MN.		
22140	Farmington, NM	0.8589	0.8871
	San Juan County, NM.		
22180	Fayetteville, NC	0.8945	0.9156
	Cumberland County, NC.		
	Hoke County, NC.		
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8865	0.9092
	Benton County, AR.		
	Madison County, AR.		
	Washington County, AR.		
	McDonald County, MO.		
22380	Flagstaff, AZ	1.1601	1.1281
	Coconino County, AZ.		
22420	Flint, MI	1.0969	1.0775
	Genesee County, MI.		
22500	Florence, SC	0.8388	0.8710
	Darlington County, SC.		
	Florence County, SC.		
22520	Florence-Muscle Shoals, AL	0.7843	0.8274
	Colbert County, AL.		
	Lauderdale County, AL.		
22540	Fond du Lac, WI	1.0063	1.0050
	Fond du Lac County, WI.		
22660	Fort Collins-Loveland, CO	0.9544	0.9635
	Larimer County, CO.		
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0133	1.0106
	Broward County, FL.		
22900	Fort Smith, AR-OK	0.7731	0.8185
	Crawford County, AR.		
	Franklin County, AR.		
	Sebastian County, AR.		
	Le Flore County, OK.		
	Sequoyah County, OK.		
23020	Fort Walton Beach-Crestview-Destin, FL	0.8643	0.8914
	Okaloosa County, FL.		
23060	Fort Wayne, IN	0.9517	0.9614
	Allen County, IN.		
	Wells County, IN.		
	Whitley County, IN.		
23104	Fort Worth-Arlington, TX	0.9569	0.9655
	Johnson County, TX.		
	Parker County, TX.		
	Tarrant County, TX.		
	Wise County, TX.		
23420	Fresno, CA	1.0943	1.0754
	Fresno County, CA.		
23460	Gadsden, AL	0.8066	0.8453
	Etowah County, AL.		
23540	Gainesville, FL	0.9277	0.9422
	Alachua County, FL.		
	Gilchrist County, FL.		
23580	Gainesville, GA	0.8958	0.9166
	Hall County, GA.		
23844	Gary, IN	0.9334	0.9467
	Jasper County, IN.		
	Lake County, IN.		
	Newton County, IN.		
	Porter County, IN.		
24020	Glens Falls, NY	0.8324	0.8659
	Warren County, NY.		
	Washington County, NY.		
24140	Goldsboro, NC	0.9171	0.9337
	Wayne County, NC.		
24220	Grand Forks, ND-MN	0.7949	0.8359
	Polk County, MN.		
	Grand Forks County, ND.		
24300	Grand Junction, CO	0.9668	0.9734

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Mesa County, CO.		
24340	Grand Rapids-Wyoming, MI	0.9455	0.9564
	Barry County, MI.		
	Ionia County, MI.		
	Kent County, MI.		
	Newaygo County, MI.		
24500	Great Falls, MT	0.8598	0.8878
	Cascade County, MT.		
24540	Greeley, CO	0.9602	0.9682
	Weld County, CO.		
24580	Green Bay, WI	0.9787	0.9830
	Brown County, WI.		
	Kewaunee County, WI.		
	Oconto County, WI.		
24660	Greensboro-High Point, NC	0.8866	0.9093
	Guilford County, NC.		
	Randolph County, NC.		
	Rockingham County, NC.		
24780	Greenville, NC	0.9432	0.9546
	Greene County, NC.		
	Pitt County, NC.		
24860	Greenville, SC	0.9804	0.9843
	Greenville County, SC.		
	Laurens County, SC.		
	Pickens County, SC.		
25020	Guayama, PR	0.3235	0.4588
	Arroyo Municipio, PR.		
	Guayama Municipio, PR.		
	Patillas Municipio, PR.		
25060	Gulfport-Biloxi, MS	0.8915	0.9132
	Hancock County, MS.		
	Harrison County, MS.		
	Stone County, MS.		
25180	Hagerstown-Martinsburg, MD-WV	0.9038	0.9230
	Washington County, MD.		
	Berkeley County, WV.		
	Morgan County, WV.		
25260	Hanford-Corcoran, CA	1.0282	1.0226
	Kings County, CA.		
25420	Harrisburg-Carlisle, PA	0.9402	0.9522
	Cumberland County, PA.		
	Dauphin County, PA.		
	Perry County, PA.		
25500	Harrisonburg, VA	0.9073	0.9258
	Rockingham County, VA.		
	Harrisonburg City, VA.		
25540	Hartford-West Hartford-East	1.0894	1.0715
	Hartford, CT.		
	Hartford County, CT.		
	Litchfield County, CT.		
	Middlesex County, CT.		
	Tolland County, CT.		
25620	Hattiesburg, MS	0.7430	0.7944
	Forrest County, MS.		
	Lamar County, MS.		
	Perry County, MS.		
25860	Hickory-Lenoir-Morganton, NC	0.9010	0.9208
	Alexander County, NC.		
	Burke County, NC.		
	Caldwell County, NC.		
	Catawba County, NC.		
26100	Holland-Grand Haven, MI	0.9163	0.9330
	Ottawa County, MI.		
26180	Honolulu, HI	1.1096	1.0877
	Honolulu County, HI.		
26300	Hot Springs, AR	0.8782	0.9026
	Garland County, AR.		
26380	Houma-Bayou Cane-Thibodaux, LA	0.8082	0.8466
	Lafourche Parish, LA.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Terrebonne Parish, LA.		
26420	Houston-Sugar Land-Baytown, TX	1.0008	1.0006
	Austin County, TX.		
	Brazoria County, TX.		
	Chambers County, TX.		
	Fort Bend County, TX.		
	Galveston County, TX.		
	Harris County, TX.		
	Liberty County, TX.		
	Montgomery County, TX.		
	San Jacinto County, TX.		
	Waller County, TX.		
26580	Huntington-Ashland, WV-KY-OH	0.8997	0.9198
	Boyd County, KY.		
	Greenup County, KY.		
	Lawrence County, OH.		
	Cabell County, WV.		
	Wayne County, WV.		
26620	Huntsville, AL	0.9007	0.9206
	Limestone County, AL.		
	Madison County, AL.		
26820	Idaho Falls, ID	0.9088	0.9270
	Bonneville County, ID.		
	Jefferson County, ID.		
26900	Indianapolis-Carmel, IN	0.9895	0.9916
	Boone County, IN.		
	Brown County, IN.		
	Hamilton County, IN.		
	Hancock County, IN.		
	Hendricks County, IN.		
	Johnson County, IN.		
	Marion County, IN.		
	Morgan County, IN.		
	Putnam County, IN.		
	Shelby County, IN.		
26980	Iowa City, IA	0.9714	0.9771
	Johnson County, IA.		
	Washington County, IA.		
27060	Ithaca, NY	0.9928	0.9942
	Tompkins County, NY.		
27100	Jackson, MI	0.9560	0.9648
	Jackson County, MI.		
27140	Jackson, MS	0.8271	0.8617
	Copiah County, MS.		
	Hinds County, MS.		
	Madison County, MS.		
	Rankin County, MS.		
	Simpson County, MS.		
27180	Jackson, TN	0.8853	0.9082
	Chester County, TN.		
	Madison County, TN.		
27260	Jacksonville, FL	0.9165	0.9332
	Baker County, FL.		
	Clay County, FL.		
	Duval County, FL.		
	Nassau County, FL.		
	St. Johns County, FL.		
27340	Jacksonville, NC	0.8231	0.8585
	Onslow County, NC.		
27500	Janesville, WI	0.9655	0.9724
	Rock County, WI.		
27620	Jefferson City, MO	0.8332	0.8666
	Callaway County, MO.		
	Cole County, MO.		
	Moniteau County, MO.		
	Osage County, MO.		
27740	Johnson City, TN	0.8043	0.8434
	Carter County, TN.		
	Unicoi County, TN.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Washington County, TN.		
27780	Johnstown, PA	0.8620	0.8896
	Cambria County, PA.		
27860	Jonesboro, AR	0.7662	0.8130
	Craighead County, AR.		
	Poinsett County, AR.		
27900	Joplin, MO	0.8605	0.8884
	Jasper County, MO.		
	Newton County, MO.		
28020	Kalamazoo-Portage, MI	1.0704	1.0563
	Kalamazoo County, MI.		
	Van Buren County, MI.		
28100	Kankakee-Bradley, IL	1.0083	1.0066
	Kankakee County, IL.		
28140	Kansas City, MO-KS	0.9495	0.9596
	Franklin County, KS.		
	Johnson County, KS.		
	Leavenworth County, KS.		
	Linn County, KS.		
	Miami County, KS.		
	Wyandotte County, KS.		
	Bates County, MO.		
	Caldwell County, MO.		
	Cass County, MO.		
	Clay County, MO.		
	Clinton County, MO.		
	Jackson County, MO.		
	Lafayette County, MO.		
	Platte County, MO.		
	Ray County, MO.		
28420	Kennewick-Richland-Pasco, WA	1.0343	1.0274
	Benton County, WA.		
	Franklin County, WA.		
28660	Killeen-Temple-Fort Hood, TX	0.8901	0.9121
	Bell County, TX.		
	Coryell County, TX.		
	Lampasas County, TX.		
28700	Kingsport-Bristol-Bristol, TN-VA	0.7985	0.8388
	Hawkins County, TN.		
	Sullivan County, TN.		
	Bristol City, VA.		
	Scott County, VA.		
	Washington County, VA.		
28740	Kingston, NY	0.9367	0.9494
	Ulster County, NY.		
28940	Knoxville, TN	0.8249	0.8599
	Anderson County, TN.		
	Blount County, TN.		
	Knox County, TN.		
	Loudon County, TN.		
	Union County, TN.		
29020	Kokomo, IN	0.9669	0.9735
	Howard County, IN.		
	Tipton County, IN.		
29100	La Crosse, WI-MN	0.9426	0.9541
	Houston County, MN.		
	La Crosse County, WI.		
29140	Lafayette, IN	0.8931	0.9145
	Benton County, IN.		
	Carroll County, IN.		
	Tippecanoe County, IN.		
29180	Lafayette, LA	0.8289	0.8631
	Lafayette Parish, LA.		
	St. Martin Parish, LA.		
29340	Lake Charles, LA	0.7914	0.8331
	Calcasieu Parish, LA.		
	Cameron Parish, LA.		
29404	Lake County-Kenosha County, IL-WI	1.0570	1.0456
	Lake County, IL.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Kenosha County, WI.		
29460	Lakeland, FL	0.8879	0.9103
	Polk County, FL.		
29540	Lancaster, PA	0.9589	0.9671
	Lancaster County, PA.		
29620	Lansing-East Lansing, MI	1.0088	1.0070
	Clinton County, MI.		
	Eaton County, MI.		
	Ingham County, MI.		
29700	Laredo, TX	0.7811	0.8249
	Webb County, TX.		
29740	Las Cruces, NM	0.9273	0.9418
	Dona Ana County, NM.		
29820	Las Vegas-Paradise, NV	1.1430	1.1144
	Clark County, NV.		
29940	Lawrence, KS	0.8365	0.8692
	Douglas County, KS.		
30020	Lawton, OK	0.8065	0.8452
	Comanche County, OK.		
30140	Lebanon, PA	0.8679	0.8943
	Lebanon County, PA.		
30300	Lewiston, ID-WA	0.9853	0.9882
	Nez Perce County, ID.		
	Asotin County, WA.		
30340	Lewiston-Auburn, ME	0.9126	0.9301
	Androscoggin County, ME.		
30460	Lexington-Fayette, KY	0.9181	0.9345
	Bourbon County, KY.		
	Clark County, KY.		
	Fayette County, KY.		
	Jessamine County, KY.		
	Scott County, KY.		
	Woodford County, KY.		
30620	Lima, OH	0.9042	0.9234
	Allen County, OH.		
30700	Lincoln, NE	1.0092	1.0074
	Lancaster County, NE.		
	Seward County, NE.		
30780	Little Rock-North Little Rock, AR	0.8890	0.9112
	Faulkner County, AR.		
	Grant County, AR.		
	Lonoke County, AR.		
	Perry County, AR.		
	Pulaski County, AR.		
	Saline County, AR.		
30860	Logan, UT-ID	0.9022	0.9218
	Franklin County, ID.		
	Cache County, UT.		
30980	Longview, TX	0.8788	0.9030
	Gregg County, TX.		
	Rusk County, TX.		
	Upshur County, TX.		
31020	Longview, WA	1.0011	1.0009
	Cowlitz County, WA.		
31084	Los Angeles-Long Beach-Glendale, CA	1.1760	1.1408
	Los Angeles County, CA.		
31140	Louisville-Jefferson County, KY-IN	0.9118	0.9294
	Clark County, IN.		
	Floyd County, IN.		
	Harrison County, IN.		
	Washington County, IN.		
	Bullitt County, KY.		
	Henry County, KY.		
	Jefferson County, KY.		
	Meade County, KY.		
	Nelson County, KY.		
	Oldham County, KY.		
	Shelby County, KY.		
	Spencer County, KY.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Trimble County, KY.		
31180	Lubbock, TX	0.8613	0.8890
	Crosby County, TX.		
	Lubbock County, TX.		
31340	Lynchburg, VA	0.8694	0.8955
	Amherst County, VA.		
	Appomattox County, VA.		
	Bedford County, VA.		
	Campbell County, VA.		
	Bedford City, VA.		
	Lynchburg City, VA.		
31420	Macon, GA	0.9519	0.9615
	Bibb County, GA.		
	Crawford County, GA.		
	Jones County, GA.		
	Monroe County, GA.		
	Twiggs County, GA.		
31460	Madera, CA	0.8154	0.8523
	Madera County, CA.		
31540	Madison, WI	1.0840	1.0672
	Columbia County, WI.		
	Dane County, WI.		
	Iowa County, WI.		
31700	Manchester-Nashua, NH	1.0243	1.0194
	Hillsborough County, NH.		
	Merrimack County, NH.		
31900	Mansfield, OH	0.9271	0.9417
	Richland County, OH.		
32420	Mayagüez, PR	0.3848	0.5078
	Hormigueros Municipio, PR.		
	Mayagüez Municipio, PR.		
32580	McAllen-Edinburg-Mission, TX	0.8773	0.9018
	Hidalgo County, TX.		
32780	Medford, OR	1.0818	1.0654
	Jackson County, OR.		
32820	Memphis, TN-MS-AR	0.9373	0.9498
	Crittenden County, AR.		
	DeSoto County, MS.		
	Marshall County, MS.		
	Tate County, MS.		
	Tunica County, MS.		
	Fayette County, TN.		
	Shelby County, TN.		
	Tipton County, TN.		
32900	Merced, CA	1.1471	1.1177
	Merced County, CA.		
33124	Miami-Miami Beach-Kendall, FL	0.9812	0.9850
	Miami-Dade County, FL.		
33140	Michigan City-La Porte, IN	0.9118	0.9294
	LaPorte County, IN.		
33260	Midland, TX	0.9786	0.9829
	Midland County, TX.		
33340	Milwaukee-Waukesha-West Allis, WI	1.0218	1.0174
	Milwaukee County, WI.		
	Ozaukee County, WI.		
	Washington County, WI.		
	Waukesha County, WI.		
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.0946	1.0757
	Anoka County, MN.		
	Carver County, MN.		
	Chisago County, MN.		
	Dakota County, MN.		
	Hennepin County, MN.		
	Isanti County, MN.		
	Ramsey County, MN.		
	Scott County, MN.		
	Sherburne County, MN.		
	Washington County, MN.		
	Wright County, MN.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Pierce County, WI.		
	St. Croix County, WI.		
33540	Missoula, MT	0.8928	0.9142
	Missoula County, MT.		
33660	Mobile, AL	0.7913	0.8330
	Mobile County, AL.		
33700	Modesto, CA	1.1729	1.1383
	Stanislaus County, CA.		
33740	Monroe, LA	0.7997	0.8398
	Ouachita Parish, LA.		
	Union Parish, LA.		
33780	Monroe, MI	0.9707	0.9766
	Monroe County, MI.		
33860	Montgomery, AL	0.8009	0.8407
	Autauga County, AL.		
	Elmore County, AL.		
	Lowndes County, AL.		
	Montgomery County, AL.		
34060	Morgantown, WV	0.8423	0.8738
	Monongalia County, WV.		
	Preston County, WV.		
34100	Morristown, TN	0.7933	0.8346
	Grainger County, TN.		
	Hamblen County, TN.		
	Jefferson County, TN.		
34580	Mount Vernon-Anacortes, WA	1.0517	1.0414
	Skagit County, WA.		
34620	Muncie, IN	0.8562	0.8850
	Delaware County, IN.		
34740	Muskegon-Norton Shores, MI	0.9941	0.9953
	Muskegon County, MI.		
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8810	0.9048
	Horry County, SC.		
34900	Napa, CA	1.3374	1.2699
	Napa County, CA.		
34940	Naples-Marco Island, FL	0.9941	0.9953
	Collier County, FL.		
34980	Nashville-Davidson—Murfreesboro, TN	0.9847	0.9878
	Cannon County, TN.		
	Cheatham County, TN.		
	Davidson County, TN.		
	Dickson County, TN.		
	Hickman County, TN.		
	Macon County, TN.		
	Robertson County, TN.		
	Rutherford County, TN.		
	Smith County, TN.		
	Sumner County, TN.		
	Trousdale County, TN.		
	Williamson County, TN.		
	Wilson County, TN.		
35004	Nassau-Suffolk, NY	1.2662	1.2130
	Nassau County, NY.		
	Suffolk County, NY.		
35084	Newark-Union, NJ-PA	1.1892	1.1514
	Essex County, NJ.		
	Hunterdon County, NJ.		
	Morris County, NJ.		
	Sussex County, NJ.		
	Union County, NJ.		
	Pike County, PA.		
35300	New Haven-Milford, CT	1.1953	1.1562
	New Haven County, CT.		
35380	New Orleans-Metairie-Kenner, LA	0.8831	0.9065
	Jefferson Parish, LA.		
	Orleans Parish, LA.		
	Plaquemines Parish, LA.		
	St. Bernard Parish, LA.		
	St. Charles Parish, LA.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	St. John the Baptist Parish, LA.		
	St. Tammany Parish, LA.		
35644	New York-White Plains-Wayne, NY-NJ	1.3177	1.2542
	Bergen County, NJ.		
	Hudson County, NJ.		
	Passaic County, NJ.		
	Bronx County, NY.		
	Kings County, NY.		
	New York County, NY.		
	Putnam County, NY.		
	Queens County, NY.		
	Richmond County, NY.		
	Rockland County, NY.		
	Westchester County, NY.		
35660	Niles-Benton Harbor, MI	0.8915	0.9132
	Berrien County, MI.		
35980	Norwich-New London, CT	1.1932	1.1546
	New London County, CT.		
36084	Oakland-Fremont-Hayward, CA	1.5819	1.4655
	Alameda County, CA.		
	Contra Costa County, CA.		
36100	Ocala, FL	0.8867	0.9094
	Marion County, FL.		
36140	Ocean City, NJ	1.0472	1.0378
	Cape May County, NJ.		
36220	Odessa, TX	1.0073	1.0058
	Ector County, TX.		
36260	Ogden-Clearfield, UT	0.8995	0.9196
	Davis County, UT.		
	Morgan County, UT.		
	Weber County, UT.		
36420	Oklahoma City, OK	0.8843	0.9074
	Canadian County, OK.		
	Cleveland County, OK.		
	Grady County, OK.		
	Lincoln County, OK.		
	Logan County, OK.		
	McClain County, OK.		
	Oklahoma County, OK.		
36500	Olympia, WA	1.1081	1.0865
	Thurston County, WA.		
36540	Omaha-Council Bluffs, NE-IA	0.9450	0.9560
	Harrison County, IA.		
	Mills County, IA.		
	Pottawattamie County, IA.		
	Cass County, NE.		
	Douglas County, NE.		
	Sarpy County, NE.		
	Saunders County, NE.		
	Washington County, NE.		
36740	Orlando-Kissimmee, FL	0.9452	0.9562
	Lake County, FL.		
	Orange County, FL.		
	Osceola County, FL.		
	Seminole County, FL.		
36780	Oshkosh-Neenah, WI	0.9315	0.9452
	Winnebago County, WI.		
36980	Owensboro, KY	0.8748	0.8998
	Daviess County, KY.		
	Hancock County, KY.		
	McLean County, KY.		
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1546	1.1237
	Ventura County, CA.		
37340	Palm Bay-Melbourne-Titusville, FL	0.9443	0.9554
	Brevard County, FL.		
37460	Panama City-Lynn Haven, FL	0.8027	0.8422
	Bay County, FL.		
37620	Parkersburg-Marietta-Vienna, WV-OH	0.7977	0.8382
	Washington County, OH.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Pleasants County, WV.		
	Wirt County, WV.		
	Wood County, WV.		
37700	Pascagoula, MS	0.8215	0.8572
	George County, MS.		
	Jackson County, MS.		
37860	Pensacola-Ferry Pass-Brent, FL	0.8000	0.8400
	Escambia County, FL.		
	Santa Rosa County, FL.		
37900	Peoria, IL	0.8982	0.9186
	Marshall County, IL.		
	Peoria County, IL.		
	Stark County, IL.		
	Tazewell County, IL.		
	Woodford County, IL.		
37964	Philadelphia, PA	1.0996	1.0797
	Bucks County, PA.		
	Chester County, PA.		
	Delaware County, PA.		
	Montgomery County, PA.		
	Philadelphia County, PA.		
38060	Phoenix-Mesa-Scottsdale, AZ	1.0287	1.0230
	Maricopa County, AZ.		
	Pinal County, AZ.		
38220	Pine Bluff, AR	0.8383	0.8706
	Cleveland County, AR.		
	Jefferson County, AR.		
	Lincoln County, AR.		
38300	Pittsburgh, PA	0.8674	0.8939
	Allegheny County, PA.		
	Armstrong County, PA.		
	Beaver County, PA.		
	Butler County, PA.		
	Fayette County, PA.		
	Washington County, PA.		
	Westmoreland County, PA.		
38340	Pittsfield, MA	1.0266	1.0213
	Berkshire County, MA.		
38540	Pocatello, ID	0.9400	0.9520
	Bannock County, ID.		
	Power County, ID.		
38660	Ponce, PR	0.4842	0.5874
	Juana Díaz Municipio, PR.		
	Ponce Municipio, PR.		
	Villalba Municipio, PR.		
38860	Portland-South Portland-Biddeford, ME	0.9908	0.9926
	Cumberland County, ME.		
	Sagadahoc County, ME.		
	York County, ME.		
38900	Portland-Vancouver-Beaverton, OR-WA	1.1416	1.1133
	Clackamas County, OR.		
	Columbia County, OR.		
	Multnomah County, OR.		
	Washington County, OR.		
	Yamhill County, OR.		
	Clark County, WA.		
	Skamania County, WA.		
38940	Port St. Lucie-Fort Pierce, FL	0.9833	0.9866
	Martin County, FL.		
	St. Lucie County, FL.		
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0911	1.0729
	Dutchess County, NY.		
	Orange County, NY.		
39140	Prescott, AZ	0.9836	0.9869
	Yavapai County, AZ.		
39300	Providence-New Bedford-Fall River, RI-MA	1.0783	1.0626
	Bristol County, MA.		
	Bristol County, RI.		
	Kent County, RI.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Newport County, RI.		
	Providence County, RI.		
	Washington County, RI.		
39340	Provo-Orem, UT	0.9537	0.9630
	Juab County, UT.		
	Utah County, UT.		
39380	Pueblo, CO	0.8753	0.9002
	Pueblo County, CO.		
39460	Punta Gorda, FL	0.9405	0.9524
	Charlotte County, FL.		
39540	Racine, WI	0.9356	0.9485
	Racine County, WI.		
39580	Raleigh-Cary, NC	0.9864	0.9891
	Franklin County, NC.		
	Johnston County, NC.		
	Wake County, NC.		
39660	Rapid City, SD	0.8833	0.9066
	Meade County, SD.		
	Pennington County, SD.		
39740	Reading, PA	0.9622	0.9698
	Berks County, PA.		
39820	Redding, CA	1.3198	1.2558
	Shasta County, CA.		
39900	Reno-Sparks, NV	1.1963	1.1570
	Storey County, NV.		
	Washoe County, NV.		
40060	Richmond, VA	0.9177	0.9342
	Amelia County, VA.		
	Caroline County, VA.		
	Charles City County, VA.		
	Chesterfield County, VA.		
	Cumberland County, VA.		
	Dinwiddie County, VA.		
	Goochland County, VA.		
	Hanover County, VA.		
	Henrico County, VA.		
	King and Queen County, VA.		
	King William County, VA.		
	Louisa County, VA.		
	New Kent County, VA.		
	Powhatan County, VA.		
	Prince George County, VA.		
	Sussex County, VA.		
	Colonial Heights City, VA.		
	Hopewell City, VA.		
	Petersburg City, VA.		
	Richmond City, VA.		
40140	Riverside-San Bernardino-Ontario, CA	1.0904	1.0723
	Riverside County, CA.		
	San Bernardino County, CA.		
40220	Roanoke, VA	0.8647	0.8918
	Botetourt County, VA.		
	Craig County, VA.		
	Franklin County, VA.		
	Roanoke County, VA.		
	Roanoke City, VA.		
	Salem City, VA.		
40340	Rochester, MN	1.1408	1.1126
	Dodge County, MN.		
	Olmsted County, MN.		
	Wabasha County, MN.		
40380	Rochester, NY	0.8994	0.9195
	Livingston County, NY.		
	Monroe County, NY.		
	Ontario County, NY.		
	Orleans County, NY.		
	Wayne County, NY.		
40420	Rockford, IL	0.9989	0.9991
	Boone County, IL.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Winnebago County, IL.		
40484	Rockingham County-Strafford County, NH	1.0159	1.0127
	Rockingham County, NH.		
	Strafford County, NH.		
40580	Rocky Mount, NC	0.8854	0.9083
	Edgecombe County, NC.		
	Nash County, NC.		
40660	Rome, GA	0.9193	0.9354
	Floyd County, GA.		
40900	Sacramento—Arden-Arcade—Roseville, CA	1.3372	1.2698
	El Dorado County, CA.		
	Placer County, CA.		
	Sacramento County, CA.		
	Yolo County, CA.		
40980	Saginaw-Saginaw Township North, MI	0.8874	0.9099
	Saginaw County, MI.		
41060	St. Cloud, MN	1.0362	1.0290
	Benton County, MN.		
	Stearns County, MN.		
41100	St. George, UT	0.9265	0.9412
	Washington County, UT.		
41140	St. Joseph, MO-KS	1.0118	1.0094
	Doniphan County, KS.		
	Andrew County, MO.		
	Buchanan County, MO.		
	DeKalb County, MO.		
41180	St. Louis, MO-IL	0.9005	0.9204
	Bond County, IL.		
	Calhoun County, IL.		
	Clinton County, IL.		
	Jersey County, IL.		
	Macoupin County, IL.		
	Madison County, IL.		
	Monroe County, IL.		
	St. Clair County, IL.		
	Crawford County, MO.		
	Franklin County, MO.		
	Jefferson County, MO.		
	Lincoln County, MO.		
	St. Charles County, MO.		
	St. Louis County, MO.		
	Warren County, MO.		
	Washington County, MO.		
	St. Louis City, MO.		
41420	Salem, OR	1.0438	1.0350
	Marion County, OR.		
	Polk County, OR.		
41500	Salinas, CA	1.4337	1.3470
	Monterey County, CA.		
41540	Salisbury, MD	0.8953	0.9162
	Somerset County, MD.		
	Wicomico County, MD.		
41620	Salt Lake City, UT	0.9402	0.9522
	Salt Lake County, UT.		
	Summit County, UT.		
	Tooele County, UT.		
41660	San Angelo, TX	0.8362	0.8690
	Irion County, TX.		
	Tom Green County, TX.		
41700	San Antonio, TX	0.8844	0.9075
	Atascosa County, TX.		
	Bandera County, TX.		
	Bexar County, TX.		
	Comal County, TX.		
	Guadalupe County, TX.		
	Kendall County, TX.		
	Medina County, TX.		
	Wilson County, TX.		
41740	San Diego-Carlsbad-San Marcos, CA	1.1354	1.1083

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	San Diego County, CA.		
41780	Sandusky, OH	0.9302	0.9442
	Erie County, OH.		
41884	San Francisco-San Mateo-Redwood City, CA	1.5165	1.4132
	Marin County, CA.		
	San Francisco County, CA.		
	San Mateo County, CA.		
41900	San Germán-Cabo Rojo, PR	0.4885	0.5908
	Cabo Rojo Municipio, PR.		
	Lajas Municipio, PR.		
	Sabana Grande Municipio, PR.		
	San Germán Municipio, PR.		
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5543	1.4434
	San Benito County, CA.		
	Santa Clara County, CA.		
41980	San Juan-Caguas-Guaynabo, PR	0.4452	0.5562
	Aguas Buenas Municipio, PR.		
	Aibonito Municipio, PR.		
	Arecibo Municipio, PR.		
	Barceloneta Municipio, PR.		
	Barranquitas Municipio, PR.		
	Bayamón Municipio, PR.		
	Caguas Municipio, PR.		
	Camuy Municipio, PR.		
	Canóvanas Municipio, PR.		
	Carolina Municipio, PR.		
	Cataño Municipio, PR.		
	Cayey Municipio, PR.		
	Ciales Municipio, PR.		
	Cidra Municipio, PR.		
	Comerío Municipio, PR.		
	Corozal Municipio, PR.		
	Dorado Municipio, PR.		
	Florida Municipio, PR.		
	Guaynabo Municipio, PR.		
	Gurabo Municipio, PR.		
	Hatillo Municipio, PR.		
	Humacao Municipio, PR.		
	Juncos Municipio, PR.		
	Las Piedras Municipio, PR.		
	Loíza Municipio, PR.		
	Manatí Municipio, PR.		
	Maunabo Municipio, PR.		
	Morovis Municipio, PR.		
	Naguabo Municipio, PR.		
	Naranjito Municipio, PR.		
	Orocovis Municipio, PR.		
	Quebradillas Municipio, PR.		
	Río Grande Municipio, PR.		
	San Juan Municipio, PR.		
	San Lorenzo Municipio, PR.		
	Toa Alta Municipio, PR.		
	Toa Baja Municipio, PR.		
	Trujillo Alto Municipio, PR.		
	Vega Alta Municipio, PR.		
	Vega Baja Municipio, PR.		
	Yabucoa Municipio, PR.		
42020	San Luis Obispo-Paso Robles, CA	1.1598	1.1278
	San Luis Obispo County, CA.		
42044	Santa Ana-Anaheim-Irvine, CA	1.1473	1.1178
	Orange County, CA.		
42060	Santa Barbara-Santa Maria, CA	1.1091	1.0873
	Santa Barbara County, CA.		
42100	Santa Cruz-Watsonville, CA	1.5457	1.4366
	Santa Cruz County, CA.		
42140	Santa Fe, NM	1.0824	1.0659
	Santa Fe County, NM.		
42220	Santa Rosa-Petaluma, CA	1.4464	1.3571
	Sonoma County, CA.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
42260	Sarasota-Bradenton-Venice, FL	0.9868	0.9894
	Manatee County, FL.		
	Sarasota County, FL.		
42340	Savannah, GA	0.9351	0.9481
	Bryan County, GA.		
	Chatham County, GA.		
	Effingham County, GA.		
42540	Scranton—Wilkes-Barre, PA	0.8347	0.8678
	Lackawanna County, PA.		
	Luzerne County, PA.		
	Wyoming County, PA.		
42644	Seattle-Bellevue-Everett, WA	1.1434	1.1147
	King County, WA.		
	Snohomish County, WA.		
42680	Sebastian-Vero Beach, FL	0.9573	0.9658
	Indian River County, FL.		
43100	Sheboygan, WI	0.9026	0.9221
	Sheboygan County, WI.		
43300	Sherman-Denison, TX	0.8502	0.8802
	Grayson County, TX.		
43340	Shreveport-Bossier City, LA	0.8865	0.9092
	Bossier Parish, LA.		
	Caddo Parish, LA.		
	De Soto Parish, LA.		
43580	Sioux City, IA-NE-SD	0.9200	0.9360
	Woodbury County, IA.		
	Dakota County, NE.		
	Dixon County, NE.		
	Union County, SD.		
43620	Sioux Falls, SD	0.9559	0.9647
	Lincoln County, SD.		
	McCook County, SD.		
	Minnehaha County, SD.		
	Turner County, SD.		
43780	South Bend-Mishawaka, IN-MI	0.9842	0.9874
	St. Joseph County, IN.		
	Cass County, MI.		
43900	Spartanburg, SC	0.9174	0.9339
	Spartanburg County, SC.		
44060	Spokane, WA	1.0447	1.0358
	Spokane County, WA.		
44100	Springfield, IL	0.8890	0.9112
	Menard County, IL.		
	Sangamon County, IL.		
44140	Springfield, MA	1.0079	1.0063
	Franklin County, MA.		
	Hampden County, MA.		
	Hampshire County, MA.		
44180	Springfield, MO	0.8469	0.8775
	Christian County, MO.		
	Dallas County, MO.		
	Greene County, MO.		
	Polk County, MO.		
	Webster County, MO.		
44220	Springfield, OH	0.8593	0.8874
	Clark County, OH.		
44300	State College, PA	0.8784	0.9027
	Centre County, PA.		
44700	Stockton, CA	1.1442	1.1154
	San Joaquin County, CA.		
44940	Sumter, SC	0.8083	0.8466
	Sumter County, SC.		
45060	Syracuse, NY	0.9691	0.9753
	Madison County, NY.		
	Onondaga County, NY.		
	Oswego County, NY.		
45104	Tacoma, WA	1.0789	1.0631
	Pierce County, WA.		
45220	Tallahassee, FL	0.8942	0.9154

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Gadsden County, FL.		
	Jefferson County, FL.		
	Leon County, FL.		
	Wakulla County, FL.		
45300	Tampa-St. Petersburg-Clearwater, FL	0.9144	0.9315
	Hernando County, FL.		
	Hillsborough County, FL.		
	Pasco County, FL.		
	Pinellas County, FL.		
45460	Terre Haute, IN	0.8765	0.9012
	Clay County, IN.		
	Sullivan County, IN.		
	Vermillion County, IN.		
	Vigo County, IN.		
45500	Texarkana, TX-Texarkana, AR	0.8104	0.8483
	Miller County, AR.		
	Bowie County, TX.		
45780	Toledo, OH	0.9586	0.9669
	Fulton County, OH.		
	Lucas County, OH.		
	Ottawa County, OH.		
	Wood County, OH.		
45820	Topeka, KS	0.8730	0.8984
	Jackson County, KS.		
	Jefferson County, KS.		
	Osage County, KS.		
	Shawnee County, KS.		
	Wabaunsee County, KS.		
45940	Trenton-Ewing, NJ	1.0835	1.0668
	Mercer County, NJ.		
46060	Tucson, AZ	0.9202	0.9362
	Pima County, AZ.		
46140	Tulsa, OK	0.8103	0.8482
	Creek County, OK.		
	Okmulgee County, OK.		
	Osage County, OK.		
	Pawnee County, OK.		
	Rogers County, OK.		
	Tulsa County, OK.		
	Wagoner County, OK.		
46220	Tuscaloosa, AL	0.8542	0.8834
	Greene County, AL.		
	Hale County, AL.		
	Tuscaloosa County, AL.		
46340	Tyler, TX	0.8811	0.9049
	Smith County, TX.		
46540	Utica-Rome, NY	0.8396	0.8717
	Herkimer County, NY.		
	Oneida County, NY.		
46660	Valdosta, GA	0.8369	0.8695
	Brooks County, GA.		
	Echols County, GA.		
	Lanier County, GA.		
	Lowndes County, GA.		
46700	Vallejo-Fairfield, CA	1.5137	1.4110
	Solano County, CA.		
47020	Victoria, TX	0.8560	0.8848
	Calhoun County, TX.		
	Goliad County, TX.		
	Victoria County, TX.		
47220	Vineland-Millville-Bridgeton, NJ	0.9832	0.9866
	Cumberland County, NJ.		
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8790	0.9032
	Currituck County, NC.		
	Gloucester County, VA.		
	Isle of Wight County, VA.		
	James City County, VA.		
	Mathews County, VA.		
	Surry County, VA.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	York County, VA.		
	Chesapeake City, VA.		
	Hampton City, VA.		
	Newport News City, VA.		
	Norfolk City, VA.		
	Poquoson City, VA.		
	Portsmouth City, VA.		
	Suffolk City, VA.		
	Virginia Beach City, VA.		
	Williamsburg City, VA.		
47300	Visalia-Porterville, CA	0.9968	0.9974
	Tulare County, CA.		
47380	Waco, TX	0.8633	0.8906
	McLennan County, TX.		
47580	Warner Robins, GA	0.8380	0.8704
	Houston County, GA.		
47644	Warren-Troy-Farmington Hills, MI	1.0054	1.0043
	Lapeer County, MI.		
	Livingston County, MI.		
	Macomb County, MI.		
	Oakland County, MI.		
	St. Clair County, MI.		
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.1054	1.0843
	District of Columbia, DC.		
	Calvert County, MD.		
	Charles County, MD.		
	Prince George's County, MD.		
	Arlington County, VA.		
	Clarke County, VA.		
	Fairfax County, VA.		
	Fauquier County, VA.		
	Loudoun County, VA.		
	Prince William County, VA.		
	Spotsylvania County, VA.		
	Stafford County, VA.		
	Warren County, VA.		
	Alexandria City, VA.		
	Fairfax City, VA.		
	Falls Church City, VA.		
	Fredericksburg City, VA.		
	Manassas City, VA.		
	Manassas Park City, VA.		
	Jefferson County, WV.		
47940	Waterloo-Cedar Falls, IA	0.8408	0.8726
	Black Hawk County, IA.		
	Bremer County, IA.		
	Grundy County, IA.		
48140	Wausau, WI	0.9722	0.9778
	Marathon County, WI.		
48260	Weirton-Steubenville, WV-OH	0.8063	0.8450
	Jefferson County, OH.		
	Brooke County, WV.		
	Hancock County, WV.		
48300	Wenatchee, WA	1.0346	1.0277
	Chelan County, WA.		
	Douglas County, WA.		
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9649	0.9719
	Palm Beach County, FL.		
48540	Wheeling, WV-OH	0.7010	0.7608
	Belmont County, OH.		
	Marshall County, WV.		
	Ohio County, WV.		
48620	Wichita, KS	0.9063	0.9250
	Butler County, KS.		
	Harvey County, KS.		
	Sedgwick County, KS.		
	Sumner County, KS.		
48660	Wichita Falls, TX	0.8311	0.8649
	Archer County, TX.		

TABLE 1.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Urban area (constituent counties)	Full wage index [2]	4/5ths wage index [3]
	Clay County, TX.		
	Wichita County, TX.		
48700	Williamsport, PA	0.8139	0.8511
	Lycoming County, PA.		
48864	Wilmington, DE-MD-NJ	1.0684	1.0547
	New Castle County, DE.		
	Cecil County, MD.		
	Salem County, NJ.		
48900	Wilmington, NC	0.9835	0.9868
	Brunswick County, NC.		
	New Hanover County, NC.		
	Pender County, NC.		
49020	Winchester, VA-WV	1.0091	1.0073
	Frederick County, VA.		
	Winchester City, VA.		
	Hampshire County, WV.		
49180	Winston-Salem, NC	0.9276	0.9421
	Davie County, NC.		
	Forsyth County, NC.		
	Stokes County, NC.		
	Yadkin County, NC.		
49340	Worcester, MA	1.0722	1.0578
	Worcester County, MA.		
49420	Yakima, WA	0.9847	0.9878
	Yakima County, WA.		
49500	Yauco, PR	0.3854	0.5083
	Guánica Municipio, PR.		
	Guayanilla Municipio, PR.		
	Peñuelas Municipio, PR.		
	Yauco Municipio, PR.		
49620	York-Hanover, PA	0.9397	0.9518
	York County, PA.		
49660	Youngstown-Warren-Boardman, OH-PA	0.8802	0.9042
	Mahoning County, OH.		
	Trumbull County, OH.		
	Mercer County, PA.		
49700	Yuba City, CA	1.0730	1.0584
	Sutter County, CA.		
	Yuba County, CA.		
49740	Yuma, AZ	0.9109	0.9287
	Yuma County, AZ.		

[1] As discussed in section IV.D.1.d. of the preamble of this proposed rule, because there will no longer be any LTCHs in their cost reporting periods that began during FYs 2003, 2004 or 2005 (the first 3 years of the 5-year wage index phase-in, respectively), we are no longer showing the 1/5th, 2/5ths and 3/5ths wage index value. For further details on the 5-year phase-in of the wage index, see section IV.D.1. of this proposed rule.

[2] The wage index values are calculated using the same wage data used to compute the wage index used by acute care hospitals under the IPPS for Federal FY 2007 (that is, fiscal year 2003 audited acute care hospital inpatient wage data without regard to reclassification under section 1886(d)(8) or section 1886(d)(10) of the Act).

[3] Four-fifths of the proposed full wage index value, applicable for a LTCH's cost reporting period beginning on or after October 1, 2005 through September 30, 2006 (Federal FY 2006). That is, for a LTCH's cost reporting period that begins during Federal FY 2006 and located in Chicago, Illinois (CBSA 16974), the 4/5ths wage index value is computed as ((4*1.0751) + 1))/5 = 1.0601. For further details on the 5-year phase-in of the wage index, see section IV.D.1. of this proposed rule.

TABLE 2.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]

CBSA code	Nonurban area	Full wage index [2]	4/5ths wage index [3]
01	Alabama	0.7591	0.8073
02	Alaska	1.0661	1.0529
03	Arizona	0.8908	0.9126
04	Arkansas	0.7307	0.7846
05	California	1.1454	1.1163
06	Colorado	0.9325	0.9460
07	Connecticut	1.1709	1.1367
08	Delaware	0.9705	0.9764
10	Florida	0.8594	0.8875
11	Georgia	0.7593	0.8074

TABLE 2.—PROPOSED LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2007 THROUGH JUNE 30, 2008 [1]—Continued

CBSA code	Nonurban area	Full wage index [2]	4/5ths wage index [3]
12	Hawaii	1.0448	1.0358
13	Idaho	0.8120	0.8496
14	Illinois	0.8320	0.8656
15	Indiana	0.8538	0.8830
16	Iowa	0.8681	0.8945
17	Kansas	0.7998	0.8398
18	Kentucky	0.7768	0.8214
19	Louisiana	0.7438	0.7950
20	Maine	0.8443	0.8754
21	Maryland	0.8926	0.9141
22	Massachusetts [4]	.....	.....
23	Michigan	0.9062	0.9250
24	Minnesota	0.9153	0.9322
25	Mississippi	0.7738	0.8190
26	Missouri	0.7927	0.8342
27	Montana	0.8590	0.8872
28	Nebraska	0.8677	0.8942
29	Nevada	0.8944	0.9155
30	New Hampshire	1.0853	1.0682
31	New Jersey [4]	.....	.....
32	New Mexico	0.8332	0.8666
33	New York	0.8232	0.8586
34	North Carolina	0.8588	0.8870
35	North Dakota	0.7215	0.7772
36	Ohio	0.8658	0.8926
37	Oklahoma	0.7629	0.8103
38	Oregon	0.9753	0.9802
39	Pennsylvania	0.8320	0.8656
40	Puerto Rico [4]	.....	.....
41	Rhode Island [4]	.....	.....
42	South Carolina	0.8566	0.8853
43	South Dakota	0.8480	0.8784
44	Tennessee	0.7827	0.8262
45	Texas	0.7965	0.8372
46	Utah	0.8140	0.8512
47	Vermont	0.9744	0.9795
49	Virginia	0.7940	0.8352
50	Washington	1.0263	1.0210
51	West Virginia	0.7607	0.8086
52	Wisconsin	0.9553	0.9642
53	Wyoming	0.9295	0.9436

[1] As discussed in section IV.D.1.d. of the preamble of this proposed rule, because there are no longer any LTCHs in their cost reporting periods that began during FYs 2003, 2004 or 2005 (the first 3 years of the 5-year wage index phase-in, respectively), we are no longer showing the 1/5th, 2/5ths and 3/5ths wage index value. For further details on the 5-year phase-in of the wage index, see section IV.D.1. of this proposed rule.

[2] The wage index values are calculated using the same wage data used to compute the wage index used by acute care hospitals under the IPPS for Federal FY 2007 (that is, fiscal year 2003 audited acute care hospital inpatient wage data without regard to reclassification under section 1886(d)(8) or section 1886(d)(10) of the Act).

[3] Four-fifths of the proposed full wage index value, applicable for a LTCH's cost reporting period beginning on or after October 1, 2005 through September 30, 2006 (Federal FY 2006). That is, for a LTCH's cost reporting period that begins during Federal FY 2006 and located in rural Illinois, the 4/5ths wage index value is computed as ((4*0.8320) + 1))/5 = 0.8656. For further details on the 5-year phase-in of the wage index, see section IV.D.1. of this proposed rule.

[4] All counties within the State are classified as urban.

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
1	[5] CRANIOTOMY AGE >17 W CC	1.6835	37.1	30.9	16.1
2	[6] CRANIOTOMY AGE >17 W/O CC	1.6835	37.1	30.9	7.1
3	[6] CRANIOTOMY AGE 0–17	1.6835	37.1	30.9	20.1
6	[6] CARPAL TUNNEL RELEASE	0.4175	17.0	14.2	4.8
7	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC.	1.2052	36.1	30.1	15.8
8	[2] PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.	0.5594	21.0	17.5	4.2

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
9	SPINAL DISORDERS & INJURIES	1.0424	34.0	28.3	9.7
10	NERVOUS SYSTEM NEOPLASMS W CC	0.6971	22.1	18.4	9.6
11	[2] NERVOUS SYSTEM NEOPLASMS W/O CC	0.5594	21.0	17.5	5.7
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.6788	25.1	20.9	8.4
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.6003	23.1	19.3	7.4
14	INTRACRANIAL HEMORRHAGE OR CEREBRALINFARCTION	0.6772	24.9	20.8	8.6
15	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT.	0.7705	26.1	21.8	6.4
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	0.6978	23.1	19.3	10.1
17	[2] NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.5594	21.0	17.5	4.7
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.7503	25.4	21.2	8.2
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.4512	19.5	16.3	5.3
21	[3] VIRAL MENINGITIS	0.7819	23.9	19.9	9.9
22	[3] HYPERTENSIVE ENCEPHALOPATHY	0.7819	23.9	19.9	7.9
23	NONTRAUMATIC STUPOR & COMA	1.0118	29.4	24.5	6.1
26	[6] SEIZURE & HEADACHE AGE 0–17	0.5594	21.0	17.5	6.2
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	0.9978	30.6	25.5	7.6
28	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	0.7983	25.8	21.5	9.1
29	[1] TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC.	0.4175	17.0	14.2	5.0
30**	[6] TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	0.4175	17.0	14.2	2.0
31	[1] CONCUSSION AGE >17 W CC	0.4175	17.0	14.2	6.2
32	[6] CONCUSSION AGE >17 W/O CC	0.4175	17.0	14.2	3.4
33**	[6] CONCUSSION AGE 0–17	0.4175	17.0	14.2	1.6
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.7029	23.4	19.5	7.4
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.5080	21.1	17.6	4.7
36	[6] RETINAL PROCEDURES	0.5594	21.0	17.5	2.7
37	[6] ORBITAL PROCEDURES	0.5594	21.0	17.5	6.6
38	[6] PRIMARY IRIS PROCEDURES	0.5594	21.0	17.5	4.3
39	[6] LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.5594	21.0	17.5	3.1
40	[6] EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.5594	21.0	17.5	6.7
41**	[6] EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	0.5594	21.0	17.5	1.6
42	[6] INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS.	0.5594	21.0	17.5	3.7
43	[6] HYPHEMA	0.4175	17.0	14.2	4.6
44	[3] ACUTE MAJOR EYE INFECTIONS	0.7819	23.9	19.9	7.4
45	[1] NEUROLOGICAL EYE DISORDERS	0.4175	17.0	14.2	4.6
46	[2] OTHER DISORDERS OF THE EYE AGE >17 W CC	0.5594	21.0	17.5	6.6
47	[6] OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.4175	17.0	14.2	4.7
48**	[6] OTHER DISORDERS OF THE EYE AGE 0–17	0.4175	17.0	14.2	2.9
49	[6] MAJOR HEAD & NECK PROCEDURES	1.1625	29.5	24.6	7.1
50	[6] SIALOADENECTOMY	1.1625	29.5	24.6	2.6
51	[6] SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY.	1.1625	29.5	24.6	4.0
52	[6] CLEFT LIP & PALATE REPAIR	1.1625	29.5	24.6	2.1
53	[6] SINUS & MASTOID PROCEDURES AGE >17	1.1625	29.5	24.6	6.2
54**	[6] SINUS & MASTOID PROCEDURES AGE 0–17	1.1625	29.5	24.6	3.2
55	[4] MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES.	1.1625	29.5	24.6	4.3
56	[6] RHINOPLASTY	1.1625	29.5	24.6	4.1
57	[6] T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	0.4175	17.0	14.2	4.9
58**	[6] T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	0.4175	17.0	14.2	1.5
59	[6] TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.4175	17.0	14.2	3.6
60	[6] TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	0.4175	17.0	14.2	2.7
61	[6] MYRINGOTOMY W TUBE INSERTION AGE >17	0.4175	17.0	14.2	10.2
62	[6] MYRINGOTOMY W TUBE INSERTION AGE 0–17	0.4175	17.0	14.2	2.3
63	[4] OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES.	1.1625	29.5	24.6	7.2
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1797	26.2	21.8	10.2
65	[1] DYSEQUILIBRIUM	0.4175	17.0	14.2	4.2
66	[6] EPISTAXIS	0.4175	17.0	14.2	4.8
67	[3] EPIGLOTTITIS	0.7819	23.9	19.9	5.8
68	OTITIS MEDIA & URI AGE >17 W CC	0.6211	20.3	16.9	5.9

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
69	[1] OTITIS MEDIA & URI AGE >17 W/O CC	0.4175	17.0	14.2	4.5
70	[6] OTITIS MEDIA & URI AGE 0–17	0.4175	17.0	14.2	3.6
71	[6] LARYNGOTRACHEITIS	0.5594	21.0	17.5	6.7
72	[3] NASAL TRAUMA & DEFORMITY	0.7819	23.9	19.9	5.2
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17.	0.7745	22.9	19.1	6.9
74	[6] OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17.	0.4175	17.0	14.2	3.9
75	MAJOR CHEST PROCEDURES	1.9944	33.5	27.9	15.4
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3982	42.5	35.4	17.2
77	[2] OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	0.5594	21.0	17.5	7.4
78	PULMONARY EMBOLISM	0.6746	22.6	18.8	9.4
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC.	0.8182	22.8	19.0	12.9
80	RESPIRATORY INFECTIONS & INFLAMMATIONSAGE >17 W/O CC.	0.6485	20.9	17.4	8.3
81	[6] RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	0.4175	17.0	14.2	10.1
82	RESPIRATORY NEOPLASMS	0.8242	21.4	17.8	11.0
83	[1] MAJOR CHEST TRAUMA W CC	0.4175	17.0	14.2	8.2
84	[6] MAJOR CHEST TRAUMA W/O CC	0.4175	17.0	14.2	4.8
85	PLEURAL EFFUSION W CC	0.6956	21.4	17.8	9.9
86	[6] PLEURAL EFFUSION W/O CC	0.4175	17.0	14.2	5.5
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.0295	24.8	20.7	10.3
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.6411	19.3	16.1	7.5
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.6802	20.6	17.2	8.6
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.4958	17.8	14.8	5.6
91	[6] SIMPLE PNEUMONIA & PLEURISY AGE 0–17	0.5594	21.0	17.5	5.3
92	INTERSTITIAL LUNG DISEASE W CC	0.6638	19.6	16.3	9.4
93	[1] INTERSTITIAL LUNG DISEASE W/O CC	0.4175	17.0	14.2	5.9
94	PNEUMOTHORAX W CC	0.6785	21.3	17.8	9.6
95	[8] PNEUMOTHORAX W/O CC	0.6785	21.3	17.8	5.3
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.6230	18.9	15.8	6.7
97	[8] BRONCHITIS & ASTHMA AGE >17 W/O CC	0.6230	18.9	15.8	5.2
98	[6] BRONCHITIS & ASTHMA AGE 0–17	0.5594	21.0	17.5	4.4
99	RESPIRATORY SIGNS & SYMPTOMS W CC	0.9381	24.6	20.5	4.8
100	[3] RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.7819	23.9	19.9	3.1
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.8147	22.2	18.5	6.7
102	[1] OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.4175	17.0	14.2	3.9
103***	[7] HEART TRANSPLANT OR IMPLANT OF HEART ASSIST SYSTEM.	0.0000	0.0	0.0	0.0
104	[6] CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH.	1.1625	29.5	24.6	22.3
105	[6] CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH.	1.1625	29.5	24.6	15.0
106	[6] CORONARY BYPASS W PTCA	1.1625	29.5	24.6	16.6
108	[6] OTHER CARDIOTHORACIC PROCEDURES	1.1625	29.5	24.6	17.1
110	[4] MAJOR CARDIOVASCULAR PROCEDURES W CC	1.1625	29.5	24.6	13.8
111	[6] MAJOR CARDIOVASCULAR PROCEDURES W/O CC	1.1625	29.5	24.6	4.9
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	1.3942	36.1	30.1	20.5
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS.	1.2425	33.0	27.5	14.0
117	[2] CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.	0.5594	21.0	17.5	6.7
118	[3] CARDIAC PACEMAKER DEVICE REPLACEMENT	0.7819	23.9	19.9	4.6
119	[3] VEIN LIGATION & STRIPPING	0.7819	23.9	19.9	8.8
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.0893	31.4	26.2	15.5
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE.	0.7451	22.4	18.7	10.1
122	[2] CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	0.5594	21.0	17.5	5.3
123	CIRCULATORY DISORDERS W AMI, EXPIRED	0.7858	17.0	14.2	7.6
124	[4] CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.1625	29.5	24.6	7.0
125	[1] CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	0.4175	17.0	14.2	4.1

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
126	ACUTE & SUBACUTE ENDOCARDITIS	0.8867	26.3	21.9	17.5
127	HEART FAILURE & SHOCK	0.6832	21.2	17.7	8.0
128	[2] DEEP VEIN THROMBOPHLEBITIS	0.5594	21.0	17.5	8.0
129	[1] CARDIAC ARREST, UNEXPLAINED	0.4175	17.0	14.2	3.5
130	PERIPHERAL VASCULAR DISORDERS W CC	0.6484	22.8	19.0	8.6
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.5267	21.0	17.5	5.9
132	ATHEROSCLEROSIS W CC	0.6621	20.7	17.3	4.3
133	[2] ATHEROSCLEROSIS W/O CC	0.5594	21.0	17.5	3.2
134	HYPERTENSION	0.4909	21.7	18.1	4.8
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC.	0.8014	23.8	19.8	6.8
136	[1] CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	0.4175	17.0	14.2	4.1
137**	6CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17.	0.4175	17.0	14.2	3.3
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.6618	21.9	18.3	6.1
139	[2] CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC.	0.5594	21.0	17.5	3.7
140	[1] ANGINA PECTORIS	0.4175	17.0	14.2	3.6
141	SYNCOPE & COLLAPSE W CC	0.5891	22.1	18.4	5.3
142	[8] SYNCOPE & COLLAPSE W/O CC	0.5891	22.1	18.4	3.8
143	[1] CHEST PAIN	0.4175	17.0	14.2	3.1
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.7715	22.1	18.4	9.6
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.4292	17.0	14.2	3.9
146	[5] RECTAL RESECTION W CC	1.6835	37.1	30.9	14.6
147	[6] RECTAL RESECTION W/O CC	0.7819	23.9	19.9	8.5
149	[6] MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	0.7819	23.9	19.9	8.1
150	[5] PERITONEAL ADHESIOLYSIS W CC	1.6835	37.1	30.9	17.3
151	[6] PERITONEAL ADHESIOLYSIS W/O CC	0.4175	17.0	14.2	8.2
152	[5] MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.6835	37.1	30.9	12.0
153	[6] MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.6835	37.1	30.9	7.1
155	[6] STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.6835	37.1	30.9	6.4
156	[6] STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17.	1.6835	37.1	30.9	12.1
157	[3] ANAL & STOMAL PROCEDURES W CC	0.7819	23.9	19.9	9.3
158	[6] ANAL & STOMAL PROCEDURES W/O CC	0.7819	23.9	19.9	4.1
159	[5] HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.6835	37.1	30.9	8.2
160	[1] HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	0.4175	17.0	14.2	4.1
161	[6] INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC.	0.4175	17.0	14.2	7.3
162	[6] INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC.	0.4175	17.0	14.2	3.1
163	[6] HERNIA PROCEDURES AGE 0–17	0.4175	17.0	14.2	4.0
164	[6] APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC.	0.7819	23.9	19.9	11.9
165	[6] APPENDECTOMY W COMPLICATED PRINCIPALDIAG W/O CC.	0.7819	23.9	19.9	6.1
166	[6] APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC.	0.7819	23.9	19.9	6.8
167	[6] APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC.	0.7819	23.9	19.9	3.1
168	[5] MOUTH PROCEDURES W CC	1.6835	37.1	30.9	7.7
169	[6] MOUTH PROCEDURES W/O CC	0.5594	21.0	17.5	3.5
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.6163	35.8	29.8	18.0
171	[3] OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	0.7819	23.9	19.9	6.7
172	DIGESTIVE MALIGNANCY W CC	0.8497	21.8	18.2	11.1
173	[2] DIGESTIVE MALIGNANCY W/O CC	0.5594	21.0	17.5	5.6
174	G.I. HEMORRHAGE W CC	0.7149	22.9	19.1	7.2
175	[2] G.I. HEMORRHAGE W/O CC	0.5594	21.0	17.5	4.3
176	COMPLICATED PEPTIC ULCER	0.9514	24.8	20.7	8.0
177	[2] UNCOMPLICATED PEPTIC ULCER W CC	0.5594	21.0	17.5	6.8
178	[6] UNCOMPLICATED PEPTIC ULCER W/O CC	0.4175	17.0	14.2	4.7
179	INFLAMMATORY BOWEL DISEASE	0.8157	23.3	19.4	9.1

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
180	G.I. OBSTRUCTION W CC	0.9126	22.8	19.0	8.3
181	[1] G.I. OBSTRUCTION W/O CC	0.4175	17.0	14.2	5.1
182	ESOPHAGITIS, GASTROENT & MISC DIGESTDISORDERS AGE >17 W CC.	0.7866	21.8	18.2	6.4
183	[1] ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	0.4175	17.0	14.2	4.4
184	[6] ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17.	0.4175	17.0	14.2	5.6
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	0.6634	23.2	19.3	7.2
186	[6] DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	0.5594	21.0	17.5	5.0
187	[6] DENTAL EXTRACTIONS & RESTORATIONS	0.5594	21.0	17.5	6.8
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	0.9596	24.4	20.3	8.5
189	[2] OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5594	21.0	17.5	4.6
190	[6] OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	0.5594	21.0	17.5	5.1
191	[5] PANCREAS, LIVER & SHUNT PROCEDURES W CC	1.6835	37.1	30.9	21.1
192	[6] PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.6835	37.1	30.9	9.3
193	[4] BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	1.1625	29.5	24.6	19.7
194	[6] BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.1625	29.5	24.6	9.9
195	[5] CHOLECYSTECTOMY W C.D.E. W CC	1.6835	37.1	30.9	16.2
196	[6] CHOLECYSTECTOMY W C.D.E. W/O CC	1.1625	29.5	24.6	8.3
197	[4] CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	1.1625	29.5	24.6	14.0
198	[6] CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.1625	29.5	24.6	6.6
199	[3] HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY.	0.7819	23.9	19.9	15.2
200	[5] HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	1.6835	37.1	30.9	17.5
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES.	1.5802	28.8	24.0	22.6
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.6011	20.2	16.8	9.9
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	0.7466	19.6	16.3	10.6
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	0.8853	22.1	18.4	8.5
205	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC.	0.6933	23.1	19.3	9.4
206	[8] DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC.	0.6933	23.1	19.3	6.0
207	DISORDERS OF THE BILIARY TRACT W CC	0.7295	21.5	17.9	8.4
208	[1] DISORDERS OF THE BILIARY TRACT W/O CC	0.4175	17.0	14.2	4.6
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.4826	41.9	34.9	9.5
211	[6] HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.6835	37.1	30.9	6.3
212	[6] HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17.	1.6835	37.1	30.9	3.8
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.1871	33.5	27.9	15.2
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	1.2147	37.6	31.3	8.8
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	1.2414	36.5	30.4	20.4
218	[5] LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC.	1.6835	37.1	30.9	8.4
219	[6] LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC.	1.6835	37.1	30.9	4.8
220	[6] LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0–17.	1.6835	37.1	30.9	10.5
223	[4] MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	1.1625	29.5	24.6	5.1
224	[1] SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC.	0.4175	17.0	14.2	2.8
225	FOOT PROCEDURES	0.9550	30.6	25.5	8.7

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
226	SOFT TISSUE PROCEDURES W CC	1.0626	34.3	28.6	10.6
227	[3] SOFT TISSUE PROCEDURES W/O CC	0.7819	23.9	19.9	4.0
228	[3] MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC.	0.7819	23.9	19.9	6.7
229	[6] HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC.	0.4175	17.0	14.2	3.8
230	[5] LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.6835	37.1	30.9	8.8
232	[5] ARTHROSCOPY	1.6835	37.1	30.9	4.1
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC.	1.1724	32.4	27.0	10.8
234	[6] OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.	0.4175	17.0	14.2	4.1
235	[3] FRACTURES OF FEMUR	0.7819	23.9	19.9	7.4
236	FRACTURES OF HIP & PELVIS	0.6802	28.9	24.1	6.8
237	[1] SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH.	0.4175	17.0	14.2	5.9
238	OSTEOMYELITIS	0.8589	28.4	23.7	12.8
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	0.6031	20.6	17.2	9.6
240	CONNECTIVE TISSUE DISORDERS W CC	0.7134	22.4	18.7	10.3
241	[1] CONNECTIVE TISSUE DISORDERS W/O CC	0.4175	17.0	14.2	5.6
242	SEPTIC ARTHRITIS	0.7700	26.2	21.8	10.2
243	MEDICAL BACK PROBLEMS	0.6028	22.3	18.6	7.1
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.5516	22.0	18.3	7.0
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4463	19.4	16.2	4.8
246	[2] NON-SPECIFIC ARTHROPATHIES	0.5594	21.0	17.5	5.6
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	0.4582	17.6	14.7	5.1
248	TENDONITIS, MYOSITIS & BURSITIS	0.7328	23.2	19.3	7.5
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	0.6370	24.0	20.0	6.2
250	[1] FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	0.4175	17.0	14.2	6.0
251	[6] FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	0.4175	17.0	14.2	4.3
252**	[6] FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17.	0.5594	21.0	17.5	1.8
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC.	0.5609	24.0	20.0	7.0
254	[1] FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC.	0.4175	17.0	14.2	4.7
255**	[6] FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0–17.	0.5594	21.0	17.5	2.9
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	0.7132	23.6	19.7	7.9
257	[5] TOTAL MASTECTOMY FOR MALIGNANCY W CC	1.6835	37.1	30.9	3.8
258	[6] TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7819	23.9	19.9	2.4
259	[3] SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.7819	23.9	19.9	4.1
260	[6] SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7819	23.9	19.9	1.9
261	[2] BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	0.5594	21.0	17.5	3.2
262	[4] BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY.	1.1625	29.5	24.6	7.7
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC.	1.2748	38.0	31.7	16.9
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	0.8507	29.9	24.9	9.9
265	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.1019	30.2	25.2	10.7
266	[3] SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	0.7819	23.9	19.9	4.7
267	[6] PERIANAL & PILONIDAL PROCEDURES	0.7819	23.9	19.9	6.8
268	[4] SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.	1.1625	29.5	24.6	5.4
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.2075	34.7	28.9	13.4

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
270	[3] OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.7819	23.9	19.9	5.7
271	SKIN ULCERS	0.8269	26.9	22.4	10.7
272	MAJOR SKIN DISORDERS W CC	0.6584	23.0	19.2	9.3
273	[1] MAJOR SKIN DISORDERS W/O CC	0.4175	17.0	14.2	5.9
274	MALIGNANT BREAST DISORDERS W CC	0.7231	21.8	18.2	10.1
275	[6] MALIGNANT BREAST DISORDERS W/O CC	0.7819	23.9	19.9	5.2
276	[2] NON-MALIGNANT BREAST DISORDERS	0.5594	21.0	17.5	7.3
277	CELLULITIS AGE >17 W CC	0.6089	20.9	17.4	8.4
278	CELLULITIS AGE >17 W/O CC	0.4254	18.0	15.0	6.1
279	[6] CELLULITIS AGE 0–17	0.4175	17.0	14.2	5.8
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC.	0.7148	24.1	20.1	6.3
281	[2] TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC.	0.5594	21.0	17.5	4.3
282**	[6] TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17	0.5594	21.0	17.5	2.2
283	MINOR SKIN DISORDERS W CC	0.6876	23.1	19.3	7.2
284	[2] MINOR SKIN DISORDERS W/O CC	0.5594	21.0	17.5	4.6
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS.	1.2418	31.6	26.3	16.0
286	[6] ADRENAL & PITUITARY PROCEDURES	1.1625	29.5	24.6	8.0
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.0402	33.0	27.5	15.2
288	[4] O.R. PROCEDURES FOR OBESITY	1.1625	29.5	24.6	5.4
289	[6] PARATHYROID PROCEDURES	1.1625	29.5	24.6	3.3
290	[6] THYROID PROCEDURES	1.1625	29.5	24.6	2.8
291	[6] THYROGLOSSAL PROCEDURES	1.1625	29.5	24.6	2.1
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	1.1549	32.0	26.7	16.9
293	[8] OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC.	1.1549	32.0	26.7	7.8
294	DIABETES AGE >35	0.6958	23.9	19.9	6.7
295	[2] DIABETES AGE 0–35	0.5594	21.0	17.5	5.7
296	NUTRITIONAL & MISC METABOLIC DISORDERSAGE >17 W CC.	0.7092	22.3	18.6	7.3
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC.	0.4596	19.3	16.1	4.6
298	[6] NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	0.4175	17.0	14.2	5.3
299	[3] INBORN ERRORS OF METABOLISM	0.7819	23.9	19.9	8.2
300	ENDOCRINE DISORDERS W CC	0.7004	23.7	19.8	9.3
301	[2] ENDOCRINE DISORDERS W/O CC	0.5594	21.0	17.5	5.2
302***	[7] KIDNEY TRANSPLANT	0.0000	0.0	0.0	0.0
303	[6] KIDNEY AND URETER PROCEDURES FOR NEOPLASM	0.7819	23.9	19.9	9.7
304	[4] KIDNEY AND URETER PROCEDURES FOR NON-NEOPLASM W CC.	1.1625	29.5	24.6	13.4
305	[6] KIDNEY AND URETER PROCEDURES FOR NON-NEOPLASM W/O CC.	0.7819	23.9	19.9	4.7
306	[4] PROSTATECTOMY W CC	1.1625	29.5	24.6	9.1
307	[6] PROSTATECTOMY W/O CC	1.1625	29.5	24.6	2.9
308	[4] MINOR BLADDER PROCEDURES W CC	1.1625	29.5	24.6	8.6
309	[6] MINOR BLADDER PROCEDURES W/O CC	1.1625	29.5	24.6	2.4
310	[4] TRANSURETHRAL PROCEDURES W CC	1.1625	29.5	24.6	7.2
311	[6] TRANSURETHRAL PROCEDURES W/O CC	1.1625	29.5	24.6	2.7
312	[3] URETHRAL PROCEDURES, AGE >17 W CC	0.7819	23.9	19.9	8.0
313	[6] URETHRAL PROCEDURES, AGE >17 W/O CC	0.7819	23.9	19.9	3.6
314	[6] URETHRAL PROCEDURES, AGE 0–17	0.7819	23.9	19.9	360.4
315	OTHER KIDNEY & URINARY TRACT PROCEDURES	1.4016	33.9	28.3	11.1
316	RENAL FAILURE	0.8321	22.9	19.1	9.9
317	ADMIT FOR RENAL DIALYSIS	0.9102	24.4	20.3	5.4
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	0.7565	21.0	17.5	9.8
319	[6] KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.7819	23.9	19.9	3.9
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.6200	21.7	18.1	7.7
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.4450	18.5	15.4	5.4
322	[6] KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	0.4175	17.0	14.2	5.2
323	[1] URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.4175	17.0	14.2	4.8
324	[1] URINARY STONES W/O CC	0.4175	17.0	14.2	2.7
325	[2] KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC.	0.5594	21.0	17.5	5.8

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
326	[6] KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.	0.4175	17.0	14.2	3.9
327	[6] KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17.	0.4175	17.0	14.2	2.8
328	[6] URETHRAL STRICTURE AGE >17 W CC	0.5594	21.0	17.5	5.4
329	[6] URETHRAL STRICTURE AGE >17 W/O CC	0.5594	21.0	17.5	2.4
330**	[6] URETHRAL STRICTURE AGE 0–17	0.5594	21.0	17.5	1.6
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC.	0.7773	22.5	18.8	8.7
332	[1] OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC.	0.4175	17.0	14.2	4.8
333	[6] OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17	0.4175	17.0	14.2	8.4
334	[6] MAJOR MALE PELVIC PROCEDURES W CC	0.4175	17.0	14.2	6.1
335	[1] MAJOR MALE PELVIC PROCEDURES W/O CC	0.4175	17.0	14.2	3.7
336	[4] TRANSURETHRAL PROSTATECTOMY W CC	1.1625	29.5	24.6	4.9
337	[6] TRANSURETHRAL PROSTATECTOMY W/O CC	1.1625	29.5	24.6	2.6
338	[3] TESTES PROCEDURES, FOR MALIGNANCY	0.7819	23.9	19.9	9.7
339	[3] TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.7819	23.9	19.9	8.4
340**	[6] TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	0.7819	23.9	19.9	2.4
341	[5] PENIS PROCEDURES	1.6835	37.1	30.9	4.4
342	[6] CIRCUMCISION AGE >17	0.7819	23.9	19.9	4.6
343**	[6] CIRCUMCISION AGE 0–17	0.7819	23.9	19.9	1.7
344	[3] OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	0.7819	23.9	19.9	3.9
345	[4] OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	1.1625	29.5	24.6	8.6
346	[3] MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WCC	0.7819	23.9	19.9	9.6
347	[1] MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.4175	17.0	14.2	4.2
348	[2] BENIGN PROSTATIC HYPERTROPHY W CC	0.5594	21.0	17.5	6.3
349	[6] BENIGN PROSTATIC HYPERTROPHY W/O CC	0.7819	23.9	19.9	4.1
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.5606	21.0	17.5	7.0
351**	[6] STERILIZATION, MALE	0.7819	23.9	19.9	1.3
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.8209	27.5	22.9	6.7
353	[6] PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.1625	29.5	24.6	9.2
354	[6] UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.1625	29.5	24.6	8.2
355	[6] UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	1.1625	29.5	24.6	4.2
356	[6] FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	1.1625	29.5	24.6	2.7
357	[6] UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	1.1625	29.5	24.6	12.3
358	[6] UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1625	29.5	24.6	5.7
359	[6] UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC.	1.1625	29.5	24.6	3.3
360	[6] VAGINA, CERVIX & VULVA PROCEDURES	1.1625	29.5	24.6	3.7
361	[6] LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.4175	17.0	14.2	4.5
362	[6] ENDOSCOPIC TUBAL INTERRUPTION	0.4175	17.0	14.2	1.0
363	[6] D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.4175	17.0	14.2	6.5
364	[6] D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4175	17.0	14.2	6.1
365	[4] OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES.	1.1625	29.5	24.6	13.0
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.9106	21.6	18.0	10.2
367	[1] MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.4175	17.0	14.2	4.6
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.7846	21.3	17.8	10.2
369	[3] MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	0.7819	23.9	19.9	5.1
370	[6] CESAREAN SECTION W CC	0.4175	17.0	14.2	7.0
371	[6] CESAREAN SECTION W/O CC	0.4175	17.0	14.2	4.5
372	[6] VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.4175	17.0	14.2	4.7
373	[6] VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.4175	17.0	14.2	3.0
374	[6] VAGINAL DELIVERY W STERILIZATION &/ORD&C	0.4175	17.0	14.2	4.1
375	[6] VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C.	0.4175	17.0	14.2	11.0

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
376	[4] POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	1.1625	29.5	24.6	5.1
377	[6] POSTPARTUM & POST ABORTION DIAGNOSES WO.R. PROCEDURE.	0.4175	17.0	14.2	7.2
378	[6] ECTOPIC PREGNANCY	0.4175	17.0	14.2	3.2
379	[6] THREATENED ABORTION	0.4175	17.0	14.2	4.8
380	[6] ABORTION W/O D&C	0.4175	17.0	14.2	2.9
381	[6] ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY.	0.4175	17.0	14.2	3.6
382	[6] FALSE LABOR	0.4175	17.0	14.2	2.1
383	[1] OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS.	0.4175	17.0	14.2	5.6
384	[6] OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	0.4175	17.0	14.2	3.6
385**	[6] NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	0.4175	17.0	14.2	1.8
386**	[6] EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	0.4175	17.0	14.2	17.9
387**	[6] PREMATURITY W MAJOR PROBLEMS	0.4175	17.0	14.2	13.3
388**	[6] PREMATURITY W/O MAJOR PROBLEMS	0.4175	17.0	14.2	8.6
389	[6] FULL TERM NEONATE W MAJOR PROBLEMS	0.4175	17.0	14.2	17.6
390**	[6] NEONATE W OTHER SIGNIFICANT PROBLEMS	0.4175	17.0	14.2	3.4
391**	[6] NORMAL NEWBORN	0.4175	17.0	14.2	3.1
392	[6] SPLENECTOMY AGE >17	1.1625	29.5	24.6	14.5
393**	[6] SPLENECTOMY AGE 0–17	1.1625	29.5	24.6	9.1
394	[4] OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.1625	29.5	24.6	12.1
395	RED BLOOD CELL DISORDERS AGE >17	0.6651	21.9	18.3	6.5
396	[6] RED BLOOD CELL DISORDERS AGE 0–17	0.4175	17.0	14.2	4.5
397	COAGULATION DISORDERS	0.8276	20.4	17.0	8.2
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.6278	20.8	17.3	8.8
399	[1] RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC.	0.4175	17.0	14.2	5.1
401	[4] LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC.	1.1625	29.5	24.6	18.9
402	[6] LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	0.5594	21.0	17.5	6.3
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	0.8846	23.9	19.9	13.2
404	[3] LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.7819	23.9	19.9	6.6
405**	[6] ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17.	0.7819	23.9	19.9	4.9
406	[5] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	1.6835	37.1	30.9	15.5
407	[6] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.1625	29.5	24.6	5.5
408	[4] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	1.1625	29.5	24.6	14.0
409	RADIOTHERAPY	0.8416	23.2	19.3	9.5
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	1.2527	28.7	23.9	5.8
411	[6] HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.5594	21.0	17.5	3.3
412	[6] HISTORY OF MALIGNANCY W ENDOSCOPY	0.5594	21.0	17.5	2.1
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC.	0.8429	21.4	17.8	11.0
414	[3] OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.	0.7819	23.9	19.9	6.4
417	[6] SEPTICEMIA AGE 0–17	0.7819	23.9	19.9	10.5
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.7961	24.1	20.1	9.6
419	[2] FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.5594	21.0	17.5	6.8
420	[2] FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.5594	21.0	17.5	4.9
421	VIRAL ILLNESS AGE >17	0.7065	20.4	17.0	6.2
422	[6] VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	0.4175	17.0	14.2	5.6
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.0426	23.2	19.3	13.2
424	[5] O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.	1.6835	37.1	30.9	19.7

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
425	[1] ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION.	0.4175	17.0	14.2	5.3
426	DEPRESSIVE NEUROSES	0.4038	22.5	18.8	6.8
427	[2] NEUROSES EXCEPT DEPRESSIVE	0.5594	21.0	17.5	7.3
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.5183	24.5	20.4	11.4
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.5326	24.0	20.0	8.5
430	PSYCHOSES	0.4024	23.1	19.3	12.6
431	[2] CHILDHOOD MENTAL DISORDERS	0.5594	21.0	17.5	10.1
432	[1] OTHER MENTAL DISORDER DIAGNOSES	0.4175	17.0	14.2	6.1
433	[6] ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFTAMA	0.4175	17.0	14.2	4.2
439	SKIN GRAFTS FOR INJURIES	1.2203	36.0	30.0	13.6
440	WOUND DEBRIDEMENTS FOR INJURIES	1.2248	34.4	28.7	13.4
441	[2] HAND PROCEDURES FOR INJURIES	0.5594	21.0	17.5	5.2
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.3670	34.9	29.1	14.5
443	[6] OTHER O.R. PROCEDURES FOR INJURIES W/O CC	0.5594	21.0	17.5	5.6
444	TRAUMATIC INJURY AGE >17 W CC	0.6598	23.2	19.3	6.4
445	[2] TRAUMATIC INJURY AGE >17 W/O CC	0.5594	21.0	17.5	4.4
446**	[6] TRAUMATIC INJURY AGE 0–17	0.5594	21.0	17.5	2.4
447	[2] ALLERGIC REACTIONS AGE >17	0.5594	21.0	17.5	3.9
448**	[6] ALLERGIC REACTIONS AGE 0–17	0.5594	21.0	17.5	2.9
449	[3] POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.7819	23.9	19.9	5.8
450	[2] POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC.	0.5594	21.0	17.5	2.9
451	[6] POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	0.7819	23.9	19.9	14.4
452	COMPLICATIONS OF TREATMENT W CC	0.9275	25.7	21.4	7.8
453	COMPLICATIONS OF TREATMENT W/O CC	0.5790	21.6	18.0	4.2
454	[3] OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.7819	23.9	19.9	6.5
455	[6] OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC.	0.7819	23.9	19.9	3.4
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.1466	32.7	27.3	8.8
462	REHABILITATION	0.5823	22.1	18.4	14.8
463	SIGNS & SYMPTOMS W CC	0.6082	22.9	19.1	6.1
464	SIGNS & SYMPTOMS W/O CC	0.5831	24.3	20.3	4.5
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	0.6877	21.2	17.7	5.5
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	0.6700	21.7	18.1	7.0
467	[3] OTHER FACTORS INFLUENCING HEALTH STATUS	0.7819	23.9	19.9	4.0
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.1478	40.5	33.8	21.4
469***	[7] PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS.	0.0000	0.0	0.0	0.0
470***	[7] UNGROUPABLE	0.0000	0.0	0.0	0.0
471	[5] BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	1.6835	37.1	30.9	6.2
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	0.9917	25.3	21.1	21.4
476	[5] PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.6835	37.1	30.9	17.7
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.5119	35.9	29.9	14.8
479	[2] OTHER VASCULAR PROCEDURES W/O CC	0.5594	21.0	17.5	3.9
480***	[7] LIVER TRANSPLANT AND/OR INTESTINAL TRANSPLANT	0.0000	0.0	0.0	0.0
481	[6] BONE MARROW TRANSPLANT	1.1625	29.5	24.6	35.2
482	[5] TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	1.6835	37.1	30.9	17.6
484	[6] CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	1.6835	37.1	30.9	23.1
485	[6] LIMB REATTACHMENT, HIP & FEMUR PROC FOR MULTIPLE SIGNIFICANT TRAUMA.	1.1625	29.5	24.6	14.7
486	[3] OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.	0.7819	23.9	19.9	21.8
487	[4] OTHER MULTIPLE SIGNIFICANT TRAUMA	1.1625	29.5	24.6	11.5
488	[4] HIV W EXTENSIVE O.R. PROCEDURE	1.1625	29.5	24.6	29.6
489	HIV W MAJOR RELATED CONDITION	0.9436	22.1	18.4	13.3
490	HIV W OR W/O OTHER RELATED CONDITION	0.6456	20.3	16.9	8.5
491	[5] MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6835	37.1	30.9	4.5

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
492	[2] CHEMO W ACUTE LEUKEMIA AS SDX OR W USE OF HIGH DOSE CHEMO AGENT.	0.5594	21.0	17.5	23.1
493	[4] LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.1625	29.5	24.6	9.8
494	[6] LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.1625	29.5	24.6	4.2
495***	[7] LUNG TRANSPLANT	0.0000	0.0	0.0	0.0
496	[4] COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	1.1625	29.5	24.6	13.8
497	[5] SPINAL FUSION EXCEPT CERVICAL W CC	1.6835	37.1	30.9	8.3
498	[6] SPINAL FUSION EXCEPT CERVICAL W/O CC	1.6835	37.1	30.9	5.3
499	[5] BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC.	1.6835	37.1	30.9	6.6
500	[4] BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC.	1.1625	29.5	24.6	3.3
501	KNEE PROCEDURES W PDX OF INFECTION W CC	1.2164	33.3	27.8	15.4
502	[3] KNEE PROCEDURES W PDX OF INFECTION W/O CC	0.7819	23.9	19.9	8.7
503	[4] KNEE PROCEDURES W/O PDX OF INFECTION	1.1625	29.5	24.6	6.1
504	[5] EXTENSIVE BURNS OR FULL THICKNESS BURNS W MV 96+ HRS W SKIN GRAFT.	1.6835	37.1	30.9	48.4
505	[5] EXTENSIVE BURNS OR FULL THICKNESS BURNS W MV 96+ HRS W/O SKIN GRAFT.	1.6835	37.1	30.9	9.4
506	[4] FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	1.1625	29.5	24.6	26.1
507	[6] FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	0.4175	17.0	14.2	13.2
508	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	0.7588	25.6	21.3	12.1
509	[1] FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	0.4175	17.0	14.2	8.6
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	0.6720	22.6	18.8	9.7
511	[1] NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA.	0.4175	17.0	14.2	5.7
512***	[7] SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	0.0000	0.0	0.0	0.0
513***	[7] PANCREAS TRANSPLANT	0.0000	0.0	0.0	0.0
515	[4] CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	1.1625	29.5	24.6	5.9
518	[6] PERCUTANEOUS CARDIOVASC PROC W/O CORONARY ARTERY STENT OR AMI.	0.4175	17.0	14.2	3.7
519	[4] CERVICAL SPINAL FUSION W CC	1.1625	29.5	24.6	7.4
520	[6] CERVICAL SPINAL FUSION W/O CC	1.6835	37.1	30.9	2.8
521	[2] ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.5594	21.0	17.5	8.4
522	[6] ALCOHOL/DRUG ABUSE OR DEPENDENCE W REHABILITATION THERAPY W/O CC.	0.5594	21.0	17.5	16.7
523	[1] ALCOHOL/DRUG ABUSE OR DEPENDENCE W/O REHABILITATION THERAPY W/O CC.	0.4175	17.0	14.2	5.8
524	[2] TRANSIENT ISCHEMIA	0.5594	21.0	17.5	4.8
525	[6] OTHER HEART ASSIST SYSTEM IMPLANT	1.6835	37.1	30.9	24.1
528	[6] INTRACRANIAL VASCULAR PROCEDURES W PDX HEMORRHAGE.	1.6835	37.1	30.9	26.9
529	[5] VENTRICULAR SHUNT PROCEDURES W CC	1.6835	37.1	30.9	11.7
530	[6] VENTRICULAR SHUNT PROCEDURES W/O CC	1.6835	37.1	30.9	4.5
531	[5] SPINAL PROCEDURES W CC	1.6835	37.1	30.9	15.5
532	[3] SPINAL PROCEDURES W/O CC	0.7819	23.9	19.9	5.9
533	[4] EXTRACRANIAL PROCEDURES W CC	1.1625	29.5	24.6	5.7
534	[6] EXTRACRANIAL PROCEDURES W/O CC	1.1625	29.5	24.6	2.5
535	[5] CARDIAC DEFIB IMPLANT W CARDIAC CATH W AMI/HF/SHOCK.	1.6835	37.1	30.9	15.6
536	[6] CARDIAC DEFIB IMPLANT W CARDIAC CATH W/O AMI/HF/SHOCK.	1.1625	29.5	24.6	11.7
537	LOCAL EXCISION & REMOVAL INT FIX DEVICES EXCEPT HIP & FEMUR W CC.	1.4672	39.9	33.3	10.8
538	[4] LOCAL EXCISION & REMOVAL INT FIX DEVICES EXCEPT HIP & FEMUR W/O CC.	1.1625	29.5	24.6	4.5
539	[4] LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE W CC.	1.1625	29.5	24.6	18.1
540	[6] LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE W/O CC.	0.4175	17.0	14.2	5.6
541	ECMO OR TRACH W MV 96+ HRS OR PDX EXC FACE, MOUTH & NECK W MAJ O.R.	3.8893	58.1	48.4	65.8

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
542	TRACH W MV 96+ HRS OR PDX EXC FACE, MOUTH & NECK W/O MAJ O.R.	2.8689	45.1	37.6	49.1
543	[5] CRANIOTOMY W MAJOR DEVICE IMPLANT ORACUTE COMPLEX CNS PDX.	1.6835	37.1	30.9	20.4
544	[5] MAJOR JOINT REPLACEMENT OR REATTACHMENT OF LOWER EXTREMITY.	1.6835	37.1	30.9	6.1
545	[5] REVISION OF HIP OR KNEE REPLACEMENT	1.6835	37.1	30.9	7.4
546	[6] SPINAL FUSION EXC CERV WITH CURVATURE OF THE SPINE OR MALIG.	1.6835	37.1	30.9	13.4
547	[6] CORONARY BYPASS W CARDIAC CATH W MAJOR CV DX	1.1625	29.5	24.6	17.8
548	[6] CORONARY BYPASS W CARDIAC CATH W/O MAJOR CV DX.	1.1625	29.5	24.6	12.0
549	[6] CORONARY BYPASS W/O CARDIAC CATH W MAJOR CV DX.	1.1625	29.5	24.6	15.0
550	[6] CORONARY BYPASS W/O CARDIAC CATH W/O MAJOR CV DX.	1.1625	29.5	24.6	9.3
551	PERMANENT CARDIAC PACEMAKER IMPL W MAJ CV DX OR AICD LEAD OR GNRTR.	1.6035	29.5	24.6	10.3
552	[4] OTHER PERMANENT CARDIAC PACEMAKER IMPLANT W/O MAJOR CV DX.	1.1625	29.5	24.6	5.5
553	OTHER VASCULAR PROCEDURES W CC W MAJOR CV DX	1.5837	32.5	27.1	15.8
554	OTHER VASCULAR PROCEDURES W CC W/O MAJOR CV DX.	1.2817	31.6	26.3	9.3
555	[3] PERCUTANEOUS CARDIOVASCULAR PROC W MAJOR CV DX.	0.7819	23.9	19.9	7.8
556	[6] PERCUTANEOUS CARDIOVASC PROC W NON-DRUG-ELUTING STENT W/O MAJ CV DX.	0.4175	17.0	14.2	2.9
557	[4] PERCUTANEOUS CARDIOVASCULAR PROC W DRUG-ELUTING STENT W MAJOR CV DX.	1.1625	29.5	24.6	6.5
558	[6] PERCUTANEOUS CARDIOVASCULAR PROC W DRUG-ELUTING STENT W/O MAJ CV DX.	0.4175	17.0	14.2	2.6
559	[6] ACUTE ISCHEMIC STROKE WITH USE OF THROMBOLYTIC AGENT.	0.7819	23.9	19.9	10.7
560	BACTERIAL & TUBERCULOUS INFECTIONS OF NERVOUS SYSTEM.	0.9308	25.5	21.3	16.9
561	NON-BACTERIAL INFECTIONS OF NERVOUS SYSTEM EXCEPT VIRAL MENINGITIS.	0.8145	22.3	18.6	15.5
562	SEIZURE AGE >17 W CC	0.6844	23.2	19.3	7.6
563	[2] SEIZURE AGE >17 W/O CC	0.5594	21.0	17.5	4.9
564	HEADACHES AGE >17	0.7565	24.1	20.1	5.3
565	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT 96+ HOURS.	2.0557	34.7	28.9	23.3
566	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT < 96 HOURS.	1.5445	27.4	22.8	13.2
567	[5] STOMACH, ESOPHAGEAL & DUODENAL PROC AGE >17 W CC W MAJOR GI DX.	1.6835	37.1	30.9	25.4
568	[5] STOMACH, ESOPHAGEAL & DUODENAL PROC AGE >17 W CC W/O MAJOR GI DX.	1.6835	37.1	30.9	19.2
569	[5] MAJOR SMALL & LARGE BOWEL PROCEDURES W CC W MAJOR GI DX.	1.6835	37.1	30.9	22.5
570	[5] MAJOR SMALL & LARGE BOWEL PROCEDURES W CC W/O MAJOR GI DX.	1.6835	37.1	30.9	14.9
571	MAJOR ESOPHAGEAL DISORDERS	0.8214	21.9	18.3	7.5
572	MAJOR GASTROINTESTINAL DISORDERS AND PERITONEAL INFECTIONS.	0.8505	23.3	19.4	11.0
573	[5] MAJOR BLADDER PROCEDURES	1.6835	37.1	30.9	16.7
574	MAJOR HEMATOLOGIC/IMMUNOLOGIC DIAG EXC SICKLE CELL CRISIS & COAGUL.	0.8106	19.7	16.4	9.1
575	SEPTICEMIA W MV 96+ HOURS AGE >17	1.6583	27.8	23.2	24.4
576	SEPTICEMIA W/O MV 96+ HOURS AGE >17	0.7925	23.0	19.2	11.8
577	[6] CAROTID ARTERY STENT PROCEDURE	1.1625	29.5	24.6	3.3
578	O. R. PROCEDURE W PDX EXC POSTOPERATIVE OR POST-TRAUMATIC INFECTION.	1.4849	35.7	29.8	26.5

TABLE 3.—FY 2007 LTC–DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, FIVE-SIXTHS OF THE GEOMETRIC AVERAGE LENGTH OF STAY AND IPPS AVERAGE LENGTH OF STAY PLUS ONE STANDARD DEVIATION—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6ths of the geometric average length of stay	IPPS average length of stay plus one standard deviation*
579	O. R. PROCEDURE W PDX OF POSTOPERATIVE OR POST-TRAUMATIC INFECTION.	1.2978	35.2	29.3	18.0

[1] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 1.
[2] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 2.
[3] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 3.
[4] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 4.
[5] Relative weights for these LTC-DRGs were determined by assigning these cases to low-volume quintile 5.
[6] Relative weights for these LTC-DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2005 MedPAR file.
[7] Relative weights for these LTC-DRGs were assigned a value of 0.0000.
[8] Relative weights for these LTC-DRGs were determined after adjusting to account for nonmonotonicity (see step 5 above).
* ''IPPS Comparable Threshold'' that could be used under the approach discussed for the short-stay outlier policy, as discussed in section V.A.2. of the preamble of this proposed rule.
** IPPS hospital statistical data for these LTC-DRGs would be supplemented due to a low volume of IPPS cases.
*** Although IPPS hospital statistical data for these DRGs may be available, a value of zero for the ''IPPS Comparable Threshold'' would be assigned for these LTC-DRGs since the relative weights for these LTC-DRGs were assigned a value of 0.0000, as discussed in section III. of the preamble of this proposed rule.

Addendum B: Executive Summary of RTI's Report (See *http://www.cms.hhs.gov/LongTermCareHospitalPPS/02a_RTIReports.asp#TopOfPage* for a Copy of the Entire Report)

ES.1 Overview of the Project Purpose

This project, ''Long-Term Care Hospital (LTCH) Payment System Refinement/Evaluation,'' will assist the Centers for Medicare & Medicaid Services (CMS) in developing criteria for assuring appropriate and cost-effective use of LTCHs in the Medicare program. The Medicare Payment Advisory Commission (MedPAC) recommended that CMS examine patient and facility-level criteria to identify and distinguish the role of these hospitals as a Medicare provider. This project evaluated these criteria and scanned the environment to identify feasible options for implementing these types of measures. CMS has been particularly interested in the factors that distinguish LTCHs from other acute care hospitals.

ES.2 The Project Approach

RTI completed this project in two phases. In Phase I, RTI prepared a background report for CMS summarizing existing information regarding LTCHs' current role in the Medicare system: their history as Medicare participating providers, the types of patients they treat, the criteria Quality Improvement Organizations (QIO) currently use to review appropriateness of care in these settings, and the types of regulations they face as Medicare participating providers. This work reviewed prior analyses of these issues and included discussions with MedPAC, other researchers, CMS, the QIOs, and the hospital associations.

In Phase II, RTI collected additional information, including:

- An examination of tools currently used by the QIOs and the industry to assess patient appropriateness for admission;
- Analysis of claims to understand variations in the LTCH populations and differences between the LTCH populations and those treated in other acute hospitals, particularly those that received outlier payments for the longer stays;
- Administration of site visits at eight LTCHs and 1 acute hospital to interview providers regarding the differences between LTCH patients and those admitted to other hospitals or treated in parts of the country lacking LTCHs.

In recognition of the heterogeneity of LTCHs, RTI worked with each of the different associations, including the National Association of Long Term Hospitals (NALTH), the Acute Long Term Hospital Association (ALTHA), the American Hospital Association (AHA), and the American Medical Rehabilitation Providers Association (AMPRA), as well as several of the larger LTCH chains.

This report summarizes these efforts and makes recommendations to CMS regarding the types of criteria needed to distinguish LTCHs from other types of hospitals. These criteria will help define LTCH patients on the basis of patient care needs or different levels of care. They include both patient and facility-level measures. The report is organized in six sections:

- Section 1 summarizes the importance of, and the issues in, defining criteria for LTCH payments.
- Section 2 provides an overview of the industry growth in recent years and an analysis of whether these changes are occurring throughout all segments of the LTCH industry. Included with these analyses are findings from past work on these issues.
- Section 3 presents analyses of Medicare claims directed at understanding the differences in resources, costs, and outcomes for LTCH patients and similar cases treated in general acute hospitals.
- Section 4 focuses on existing level of care definitions and summarizes the tools currently used to make level of care determinations by QIOs, hospitals, and healthcare systems, including those criteria applied in areas with and without local LTCHs. Included are interviews with some of the Medicare QIOs as well as analysis of existing tools, such as the InterQualTM level of care determination tools.
- Section 5 presents RTI's analysis of hospital margins, both LTCH margins and general acute margins for certain types of cases. DRG-specific analysis examines the relationship between Medicare payments and hospital costs for certain types of cases.
- Section 6 presents RTI's recommendations for identifying cases that should qualify for LTCH payments. Fifteen recommendations are included which focus on patient-level characteristics, facility-level characteristics, issues related to creating consistent standards across acute hospitals for these medically complex patients, and additional administrative changes that would improve CMS' ability to implement their payment policies.

ES.3 Section Summaries

Section 1: Introduction

This section presents the importance of defining LTCH criteria to distinguish cases that qualify for the higher LTCH PPS payments. Information is presented that compares the LTCH and IPPS rates, case mix weights, and expected length of stay for each DRG. The two hospitals are very similar in that LTCHs must meet acute hospital certification requirements. However, LTCHs must have average Medicare LOS of more than 25 days to qualify for the higher PPS payment rate. The base LTCH payment rate is substantially higher than the IPPS rate ($38,086 compared to $5,308 in 2007). While both types of hospitals have payment factors to adjust for higher and lower cost cases, such as short stay and high cost outliers, the average cost episode is substantially higher when LTCHs are used as part of the episode.

This section also compares the certification requirements of LTCHs to other IPPS-

excluded hospitals. The Medicare conditions of participation set staffing and patient management requirements for hospitals to ensure that appropriate care is provided. For the IPPS-excluded hospitals, these standards ensure that the provider can meet the specialized needs of the populations they are treating, such as those required by the acute physical rehabilitation or psychiatric populations.

Differences in expected patient severity, staff expertise, and case mix measurement methods used for LTCHs, IPPS, IRFs, Psychiatric hospitals, and SNFs are also presented. In general, the IPPS covers the most severely ill cases in their ICU, the LTCHs admit cases that are medically complex and equal to an ICU step-down unit in terms of intensity and higher staffing needs, IRFs admit cases that are less medically complex but highly acute in terms of their functional impairments. Psychiatric hospitals and skilled nursing facilities have the least medically complex admissions. The lines between each group are poorly defined.

Section 2: LTCH Availability

This section presents information on the changing supply of LTCHs. The number of LTCHs has grown markedly since the IPPS was established in 1983. Much of the growth has occurred since 1993 when the number of LTCHs exploded from 105 hospitals to the current number of 383 hospitals as of December 2005. The states with the highest number of facilities are also those with the highest number of Medicare beneficiaries, including Texas, Louisiana, Ohio, Pennsylvania, and Michigan to name a few. The number of states with LTCHs has continued growing as well. Many of the new hospitals are for-profit organizations which accounted for 58 percent of all hospitals in December 2005, up from 45 percent in 1996. The greatest growth was in the smaller hospitals with the opening of many hospital in hospitals, although this may be changing in response to Medicare co-location policies.

LTCH hospitals generally specialize in three types of populations. The majority of cases are medically complex, many of whom have respiratory conditions. A second, but smaller group are those admitted for rehabilitation services. And a smaller group are admitted for longer stay psychiatric services. Specialization in different cases is notable by looking at the distributions of cases admitted to each hospital. Respiratory-related, psychoses, and ventilator cases accounted for the highest proportion of admissions at most hospitals (averaging around 15 percent of all admissions/facility). However, the medians were much lower except in the case of ventilator admissions which accounted for 9.3 percent of admissions at half the LTCHs in the US. Also notable are the small proportion of hospitals that have a very high proportion of their cases in certain DRGs. For example, DRG 430: Psychoses accounts for 62 percent of admissions in a few of the LTCHs.

Section 3: LTCH Populations, Potential Substitutes, and Patient Differences Among Hospitals

This work has been useful for answering the questions identified in Section 1, specifically whether there are differences between LTCH cases and other inpatient cases in terms of the average program payments, beneficiary use levels, and individual outcomes. The first half of this section profiled the typical LTCH admission to examine the types of cases treated in LTCHs, their associated program costs, and this population's use of other services. The results showed that many of the types of patients treated in LTCHs are also treated in other acute care settings. While the most common LTCH admission is DRG 475, the majority of these cases, nationally are treated in IPPS settings, both as inlier and outlier populations. Similarly the second most frequent LTCH admission, DRG 249 is admitted as a non-outlier IRF patient or SNF patient almost as often as an LTCH patient.

LTCH patients also use many services during an episode of care. These cases are frequently readmitted to the general acute hospital (about 40 percent of the time) and may have intervening stays at IRFs or SNFs prior to readmission. Also included were comparisons of the costs and use for patients in the same DRG groups who were treated at other types of inpatient settings. Average costs per case differed by type of setting.

The second part of this section examined the acute care admissions to identify differences between the types of cases likely to be admitted to an LTCH and other acute discharges in the same diagnostic and severity group. The multivariate analysis of this issue suggested that severity is an important predictor of LTCH use. This supports past work suggesting that LTCH cases have a higher severity level, although a large proportion are in APR–DRG group 3, as well as group 4. Being located in a state with a large number of LTCHs was the most important predictor of LTCH use, all else equal.

Examining the acute length of stay differences was also useful for understanding the relative role of general acute and LTCHs in treating these severely ill populations. The multivariate work showed that LTCH users have a shorter acute inpatient length stay. Understanding whether LTCH hospitals are substituting for services already paid to IPPS hospitals or whether LTCHs are providing specialized services is not well understood.

Better measures of acuity are needed to gauge the differences in medical or functional impairments between patients using LTCHs and those using other settings. Additional work in Phase 3 of this project will examine the discharge transitions for acute hospital discharges in areas that lack LTCHs. Using propensity score methods to match patients on diagnosis, severity, and additional factors, as well as control for differences in the availability of services will be important for understanding the potential overlap between acute and LTCH admissions.

Section 4: Determining Levels of Care

This section examines current standards in the Medicare program and private sector for determining appropriate levels of care. We explored three areas: 1) Current Medicare certification rules governing acute, LTCH, IRF, and Psychiatric hospital conditions of participation; 2) QIO and private sector definitions of populations qualifying for different hospital and PAC sites of care; and 3) QIO's current roles in reviewing appropriateness of hospital admissions. This included interviewing 11 QIOs in states with both LTCHs and other PAC providers.

The Medicare certification rules are important because they set standards of practice to ensure appropriate quality of care is provided to Medicare beneficiaries. While LTCHs must meet the acute inpatient certification requirements, IRF and psychiatric hospitals have additional requirements governing the management of their patients and the types of staff they must employ. Both types of IPPS-excluded hospitals are required to have a physician in charge of an interdisciplinary team that includes professionals of varied backgrounds, specific to the respective types of patients. Nursing and therapy staff are expected to have relevant backgrounds in psychiatric or rehabilitation services, respectively. They are to be lead by a physician with ''appropriate training'' in the psychiatric hospital or ''at least 2 years of rehabilitation training or experience'' in the IRF.

They are also limited to admitting certain populations. All psychiatric admissions must be admitted for psychiatric conditions and must be actively treated or discharged. IRFs, on the other hand, can admit a wide range of rehabilitation populations but 50–75 percent must be treated for one of 13 groups of conditions or the IRF can lose its certification.

Patient level criteria were also examined. The Medicare program, in general, does not specify patient level criteria for LTCHs. IRF patients must be well enough to participate in 3 hours therapy/day, in general. Psychiatric patients must be actively treated and not just admitted for monitoring of a chronic condition. Both IRF and psychiatric patients must be improving from treatment or be discharged.

Primary responsibility for monitoring whether Medicare cases are admitted to appropriate facilities rests with the Quality Improvement Organizations (QIO). QIOs were interviewed regarding the tools they use to assess appropriate admissions. Their formal charge is to assess whether the services needed could be provided on a more economical basis in an alternative setting. However, they do not distinguish between types of acute settings.

The QIOS use several tools, although most use one developed by the private sector and used by several other insurers, the InterQual ™ tool. This tool is a set of clinical algorithms intended to create mutually exclusive groups of cases for admission to different types of hospitals (acute, LTCH, IRF, psychiatric), as well as SNFs and ambulatory services, such as home health and less intensive psychiatric services. These tools are guidelines for these decisions with final decisions made by physicians or nurses, depending on how complicated a case may be. In general, the InterQual ™ tool is a complex set of conditions and treatment needs that identify ICU cases, less intensive hospital cases, and other types of admissions. While this tool is widely used by QIOs, they have not been using it to distinguish between

LTCH and general acute admissions nor do the criteria currently distinguish between those two groups.

Some members of the LTCH industry have proposed criteria for identifying their patients. However, these criteria lacked specificity in several areas and like the InterQual™ tool, failed to distinguish between general acute and LTCH admissions. However, they suggested that all LTCH cases should be medically complex, including any types of rehabilitation or psychiatric cases.

Other parts of the industry suggested that LTCH admissions be restricted to 8 types of cases commonly admitted to LTCHs. However, these proposals failed to distinguish severity within these conditions again, making no distinction between general acute and LTCH severity.

Site visits at eight LTCHs and one acute hospital with a respiratory ventilator unit were conducted to understand the providers' perceptions of appropriate admissions to these settings. Physicians at each site were interviewed regarding the differences between the patients they treated and those treated in an acute hospital ICU, medical/surgical floor, IRF, or SNF. The LTCH physicians perceived themselves as specialists in treating these very complicated patients. Many of the patients are having acute exacerbations of chronic respiratory conditions, multi-system organ failures, and other complications, including wounds and infections. The hospitals provide interdisciplinary treatment teams with nurse staffing levels that were lower than ICU but higher than general units in acute hospitals. Many had ICUs, particularly the free-standing facilities as patients often had emergent care needs, particularly if they were being weaned from a ventilator. The LTCHs consistently distinguished their admissions from ICU cases in that they only admitted medically stable patients. They perceived the acute hospitals' roles to be one of diagnosis and stabilization.

The acute hospital with a ventilator unit was very similar in practice to an LTCH but was paid under the IPPS system. This unit was a special unit where respiratory cases were admitted for higher levels of monitoring than was available on the general floor and interdisciplinary treatment teams cared for the patients. However, anecdotal concerns were also raised about the cost of caring for these difficult patients under the IPPS payment system.

Section 5: Medicare Margins Analysis

This section examined LTCH facility financial performance before and after the introduction of PPS. We found that aggregate facility total margins rose from 4.9% in FY 2002 to 8.9% in FY 2003, and Medicare inpatient PPS margins rose from 1.9% to 8.3% in the same period. In the first year of implementation, the inter-quartile range on LTCH PPS margins was −0.2% to +17.1%. Facilities paid under the phased-in rates and public LTCHs were disproportionately represented at the lower end of the distribution. Many facilities were able to improve their profitability by opting for 100% federal rates in year 2, indicating that the base rate was set at a generous level relative to average standardized cost per case.

Median facility PPS margins were highest among for-profits and highest for those certified in recent years. Margins were lower for those with a higher proportion of high-cost outliers. and—somewhat surprisingly—lower for those with a higher proportion of very short-stay outliers (stays less than one half the geometric mean LOS).

Case-level margin analyses were conducted for claims in FY 2003 and 2004 that were paid under the 100% federal rate. Margins varied substantially across DRGs, even after stratifying to remove the effects of high-cost or short-stay outlier prevalence. Across the 10 most common reasons for admission, average margins were lowest for those in Rehabilitation (−0.1%) and highest for those in Ventilator Support (21.3%). Across all cases the aggregate margin was 12.4%, but it was 17.4% for inlier cases, 13.8% for short-stay outlier cases and −14.3% for high-cost outlier cases. The variation in profitability across DRGs was even greater in multivariate models that were able to control for fixed hospital-specific effects, as well as outlier status.

In fiscal 2004, the median margin for LTCH Ventilator Support cases was 23.1%. We found that in IPPS settings, the median for cases in that same DRG 475 was 13.1%. The mean 1.4%, indicating some cases had very large losses. There is an unusually large amount of within-DRG variation in the IPPS setting; among the roughly half of cases staying 10 days or less, the median margin was 42.6%, compared to negative 27.1% for those staying 10 days or more. IPPS margins were slightly lower for the Ventilator Support cases that transferred to LTCHs than for those with other discharge dispositions. Setting-specific profit differentials require further study using a complete episode-of-care file, to adjust for changes in DRGs across inpatient settings and to control adequately for possible patient selection effects.

We conclude that underlying high LTCH profitability stems from a generous base rate during the first two PPS years. However, substantial variation in profitability across DRGs " including the unusually high margins that we found for Ventilator cases and other respiratory-related DRGs " stems from bias in the DRG weights that causes systematic understatement of costs for cases using relatively more ancillary services. This is a design problem within LTCH PPS that can only be addressed with improved cost-based weights.

Section 6: Recommendations for Identifying Appropriate LTCH Cases

Based on the findings in this report, this Section provides recommendations and discussions for developing patient level criteria, facility level criteria, creating more consistency between general acute and LTCH payment and certification rules, and several administrative issues related to LTCH identification methods. Complete discussions accompany each recommendation in Section 6.

A. Patient-Level Recommendations

Recommendation 1: Restrict LTCH admissions to cases that meet certain medical conditions, including having a primary diagnosis that is medical in nature, not function or psychiatric, and meeting a certain level of medical complexity that reflects severely ill populations.

Recommendation 2: Require LTCH Admissions to be discharged if not having diagnostic procedures or improving with treatment, such as those receiving long term ventilator management.

Recommendation 3: Develop a list of criteria to measure medical severity for hospital admissions.

Recommendation 4: Establish a Technical Advisory Group.

Recommendation 5: Establish a data collection mechanism to collect this information.

Recommendation 6: Require LTCHs to collect functional measures as well as physiologic measures on all patients receiving physical, occupational, or speech and language pathology services.

B. Facility Level Recommendations

Recommendation 7: Standardize conditions of participation and set staffing requirements to ensure appropriate staff for treating medically complex cases.

Recommendation 8: Keep the 25 day average length stay requirement in place to limit LTCH's incentives to unbundle and clearly delineate between general and long term acute patients.

C. Recommendations To Improve Consistency Between General Acute and Long Term Acute Hospital Payment and Certification Policies

Recommendation 9: Allow LTCHs, like general acute hospitals, to open certified, distinct-part rehabilitation and psychiatric units if CMS finds that restricting LTCH admissions to the medically complex cases results in access problems for IRF or psychiatric patient populations.

Recommendation 10: Require LTCHs to meet the same regulatory restrictions as general acute hospitals by limiting their allowance to only one of each type of distinct-part unit.

Recommendation 11: Establish payment rules that provide a disincentive for LTCHs to transfer cases early to other post acute settings.

Recommendation 12: Conduct additional research to examine costs associated with different segments of an acute episode for medically complex patients. This should also include an examination of the IPPS margins for common types of LTCH cases.

D. Administrative Recommendations

Recommendation 13: Establish a provider identification code for satellite facilities and hospitals in hospitals (HIH).

Recommendation 14: Strengthen the requirement for parent facilities to report satellite locations by requiring them to be identified on the cost report.

Recommendation 15: Clarify QIO roles in overseeing appropriateness of admissions of LTCHs.

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Part III

Department of Homeland Security

U.S. Citizenship and Immigration Services

8 CFR Part 103

Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 103

[CIS No. 2393–06; Docket No. USCIS–2006–0044]

RIN 1615–AB53

Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the immigration and naturalization benefit application and petition fees of the Immigration Examinations Fee Account. Fees collected from persons requesting these benefits are deposited into the Immigration Examinations Fee Account. These fees are used to fund the full cost of processing immigration and naturalization benefit applications and petitions, biometric services, and associated support services. In addition, these fees must recover the cost of providing similar services to asylum and refugee applicants and certain other immigrants at no charge.

The fees that fund the Immigration Examinations Fee Account were last updated on October 26, 2005, solely to reflect an increase in costs due to inflation. The last comprehensive fee review was conducted in fiscal year 1998. U.S. Citizenship and Immigration Services conducted a new comprehensive review of the resources and activities funded by the Immigration Examinations Fee Account and determined that the current fees do not reflect current processes or recover the full costs of services that should be provided. Therefore, this rule proposes to increase the immigration and naturalization benefit application and petition fee schedule by a weighted average of $174, from an average fee of $264 to $438. These increases will ensure sufficient funding to meet immediate national security, customer service, and standard processing time goals, and to sustain and improve service delivery. Furthermore, the rule proposes to merge the fees for certain applications so applicants will pay a single fee rather than paying several fees for related services. The rule would permit U.S. Citizenship and Immigration Services to devote certain revenues to broader investments in a new technology and business process platform to improve substantially its capabilities and service levels.

This rule also proposes generally to allocate costs for surcharges and routine processing activities evenly across all form types for which fees are charged, and to vary fees in proportion to the amount of adjudication decision-making and interview time typically required. This rule proposes to eliminate fees for interim benefits, duplicate filings, and premium processing by consolidating and reallocating costs among the various fees. The rule also proposes to exempt applicants for T nonimmigrant status, or for status under the Violence Against Women Act from paying certain fees, and modify substantially the availability of individual fee waivers by limiting them to certain specified form types.

DATES: Written comments must be submitted on or before April 2, 2007.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS–2006–0044 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: OSComments@dhs.gov*. Include the docket number in the subject line of the message.
- *Facsimile:* Federal eRulemaking portal at 866–466–5370.
- *Mail:* Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS–2006–0044 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Paul Schlesinger, Chief, Office of Budget, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Suite 4052, Washington, DC 20529, telephone (202) 272–1930.

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PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

List of Acronyms and Abbreviations

ABC—Activity-Based Costing
AAO—Administrative Appeals Office
CBP—Bureau of Customs and Border Protection
CFO Act—Chief Financial Officers Act of 1990
CFO—Chief Financial Officer
COOP—Continuity of Operations
CHEP—Cuban Haitian Entrant Program
DHS—Department of Homeland Security
FASAB—Federal Accounting Standards Advisory Board
FBI—Federal Bureau of Investigation
FY—Fiscal Year
FDNS—Fraud Detection and National Security
FOIA—Freedom of Information Act
GAO—Government Accountability Office
GPRA—Government Performance Results Act of 1993
IEFA—Immigration Examination Fee Account
ICE—Bureau of Immigration and Customs Enforcement
IIO—Immigration Information Officers
INA—Immigration and Nationality Act
IT—Information Technology
IBIS—Interagency Border Inspection System
LAP—Lease Acquisition Program
NARA—National Archives and Records Administration
NRP—National Recruitment Program
NSRV—National Security and Records Verification
NACARA—Nicaraguan Adjustment and Central American Relief Act
ORS—Office of Records Services
OMB—Office of Management and Budget
PMB—Performance Management Branch
PA—Privacy Act
TPS—Temporary Protected Status
UMRA—Unfunded Mandates Reform Act of 1995
USPS—United States Postal Service
USCIS—United States Citizenship and Immigration Services
VAWA—Violence Against Women Act

I. Public Participation

USCIS invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to the Department of Homeland Security (DHS) and U.S. Citizenship and Immigration Services (USCIS) in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2006–0044 for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

The docket includes additional documents that support the analysis contained in this rule to determine the specific fees that are proposed. These documents include:

- *FY 2008/2009 Fee Review Supporting Documentation;* and
- *Small Entity Analysis for Adjustment of the Immigration Benefit Application/Petition Fee Schedule.*

These documents may be reviewed on the electronic docket. The budget methodology software used in computing the immigration benefit application/petition and biometric fees is a commercial product licensed to USCIS which may be accessed on-site by appointment by calling (202) 272–1930.

II. Legal Authority and Requirements

The Immigration and Nationality Act of 1952, as amended, (INA) provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including the costs of providing similar services without charge to asylum applicants and certain other immigrants. INA section 286(m), 8 U.S.C. 1356(m). The costs of providing services without charge must be funded by filing fees from other application and petition types. USCIS refers to the additional charges used to pay for these services as ''surcharges.'' The INA also states that the fees may recover administrative costs as well. *Id.* The fee revenue collected under section 286(m) of the INA remains available to provide immigration and naturalization benefits and the collection of, safeguarding of, and accounting for fees. INA section 286(n), 8 U.S.C. 1356(n).

USCIS must also conform to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901–03. The CFO Act requires each agency's Chief Financial Officer (CFO) to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' *Id.* at 902(a)(8). This proposed rule reflects recommendations made by the DHS CFO and USCIS CFO.

Office of Management and Budget (OMB) Circular A–25 establishes Federal policy regarding fees assessed for Government services and the basis upon which federal agencies set user charges sufficient to recover the full cost to the Federal Government. OMB Circular A–25, *User Charges* (Revised), section 6, 58 FR 38142 (July 15, 1993). Under OMB Circular A–25, the objective of the United States Government is to ensure that it recovers the full costs of providing specific services to users. Full costs include, but are not limited to, an appropriate share of—

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;

(b) Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel and rents or imputed rents on land, buildings, and equipment; and,

(c) Management and supervisory costs.

Full costs are determined based upon the best available records of the agency. *Id. See also* OMB Circular A–11, section 31.12 (June 30, 2006) (Fiscal Year (FY) 2008 budget formulation and execution policy regarding user fees), found at *http://www.whitehouse.gov/omb/circulars/a11/current_year/a11_toc.html.*

When developing fees for services, USCIS also looks to the cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB defines ''full cost'' to include ''direct and indirect costs that contribute to the output, regardless of funding sources.'' Federal Accounting Standards Advisory Board, *Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government* 36 (July 31, 1995). To obtain full cost, FASAB identifies various classifications of costs to be included, and recommends various methods of cost assignment. *Id.* at 33–42.

This rule proposes enhanced service levels, more complete funding of existing services, and specific cost allocation methods.

III. The Immigration Examinations Fee Account

A. General Background

In 1988, Congress established the Immigration Examination Fee Account (IEFA). Pub. L. 100–459, sec. 209, 102

Stat. 2186 (Oct. 1, 1988); enacting, after correction, INA sections 286(m), (n), 8 U.S.C. 1356(m), (n). Since 1989, fees deposited into the IEFA fund the provision of immigration and naturalization benefits, and other benefits as directed by Congress. In subsequent legislation, Congress directed that the IEFA fund the cost of asylum processing and other services provided to immigrants at no charge. Pub. L. 101–515, sec. 210(d)(1), (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit application fees were increased to recover these additional costs. *E.g.*, 59 FR 30520 (June 14, 1994).

USCIS, with limited exceptions, prepares all fingerprint cards (and electronic fingerprint capture) used to conduct Federal Bureau of Investigation (FBI) criminal background checks on individuals applying for certain benefits under the INA. Pub. L. 105–119, tit. I, 111 Stat. 2440, 2448 (Nov. 26, 1997). This legislation also authorizes USCIS to charge a fee for this fingerprinting service (which is now referred to as a biometric service fee). *Id.* The fees are deposited into the IEFA and are available for expenditure by USCIS to provide services. INA section 286(n), 8 U.S.C. 1356(n).

Table 1 lists, by form number, the types of immigration benefit applications and petitions for which fees are collected.[1]

TABLE 1.—TYPES OF IMMIGRATION BENEFIT APPLICATIONS AND PETITIONS

Form No.	Description
I–90	Application to Replace Permanent Resident Card.
I–102	Application for Replacement/Initial Nonimmigrant Arrival—Departure Document.
I–129	Petition for a Nonimmigrant Worker.
I–129F	Petition for Alien Fiancé(e).
I–130	Petition for Alien Relative.
I–131	Application for Travel Document.
I–140	Immigrant Petition for Alien Worker.
I–191	Application for Advance Permission to Return to Unrelinquished Domicile.
I–192	Application for Advance Permission to Enter as Nonimmigrant.
I–193	Application for Waiver of Passport and/or Visa.
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal.
I–290B/Motions	Appeal for any decision other than BIA; Motion to reopen or reconsider decision other than BIA.
I–360	Petition for Amerasian, Widow(er), or Special Immigrant.
I–485	Application to Register Permanent Residence or Adjust Status.
I–526	Immigrant Petition by Alien Entrepreneur.
I–539	Application to Extend/Change Nonimmigrant Status.
I–600/600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition.
I–601	Application for Waiver on Grounds of Excludability.
I–612	Application for Waiver of the Foreign Residence Requirement.
I–687	For Filing Application for Status as a Temporary Resident.
I–690	Application for Waiver of Excludability.
I–694	Notice of Appeal of Decision.
I–695	Application for Replacement Employment Authorization or Temporary Residence Card.
I–698	Application to Adjust Status from Temporary to Permanent Resident.
I–751	Petition to Remove the Conditions on Residence.
I–765	Application for Employment Authorization.
I–817	Application for Family Unity Benefits.
I–821	Application for Temporary Protected Status.
I–824	Application for Action on an Approved Application or Petition.
I–829	Petition by Entrepreneur to Remove Conditions.
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Pub. L. 105–100) (NACARA).
I–905	Application for Authorization to Issue Certification for Health Care Workers.
I–914	Application for T Nonimmigrant Status.
N–300	Application to File Declaration of Intention.
N–336	Request for Hearing on a Decision in Naturalization Procedures.
N–400	Application for Naturalization.
N–470	Application to Preserve Residence for Naturalization Purposes.
N–565	Application for Replacement Naturalization/Citizenship Document.
N–600/600K	Application for Certification of Citizenship/Application for Citizenship and Issuance of Certificate under Section 322.
Biometrics	Capturing and Processing Biometric Information.

Several IEFA fees are set by statute. Section 244(c)(1)(B) of the INA, 8 U.S.C. 1254a(c)(1)(B), limits the filing fee for Temporary Protected Status (Form I–821) to $50. Section 286(u) of the INA, 8 U.S.C. 1356(u), created a Premium Processing Service for certain kinds of employment-based applications, and set the premium fee at $1,000. Premium Processing Service guarantees that USCIS will process a petition or application within fifteen calendar days of receiving a Form I–907, Request for Premium Processing Service. 8 CFR 103.2(f). The use of premium processing fees is limited to providing premium processing services themselves and to making infrastructure improvements in adjudications and customer service processes. INA section 286(u), 8 U.S.C. 1356(u). These statutory fees relating to

[1] The Form I–905, Application for Authorization to Issue Certification for Health Care Workers, is represented in Table 1 and in subsequent tables for the purpose of identifying total IEFA volume, but is not subject to the proposed fee adjustments in this rule since the form type and associated fee has only recently been established.

immigration services are not affected by this proposed rule.

As is the case with the current fee structure, waiver applications (Form I–191, Application for Advance Permission to Return to Unrelinquished Domicile; Form I–192, Application for Advance Permission to Enter as a Non-Immigrant; Form I–193, Application for Waiver of Passport and/or Visa; Form I–212, Application to Reapply for Admission into the U.S. After Deportation; Form I–601, Application for Waiver on Grounds of Excludability; and Form I–612, Application for Waiver of the Foreign Residence Requirement) will be combined and subsequently referenced as ''Waiver Applications.'' One universal fee applies to these application and form types.

In addition to the IEFA, USCIS receives fee funding from several smaller, specific accounts, such as the H–1B Nonimmigrant Petitioner Account under section 286(s) of the INA, 8 U.S.C. 1356(s), and the Fraud Prevention and Detection Account under section 286(v) of the INA, 8 U.S.C. 1356(v), which this proposed rule does not affect.

B. Fee Schedule History

The current immigration benefit application and petition fees are based on a review implemented in FY 1998, adjusted for cost of living increases and other factors. USCIS periodically adjusts the fees for inflation with the last adjustment for inflation effective October 25, 2005. 70 FR 56182 (Sept. 26, 2005).

USCIS began charging a fee for fingerprinting services in 1998. 63 FR 12979 (Mar. 17, 1998). USCIS later adjusted the fee to recover the full costs of providing fingerprinting services. 66 FR 65811 (Dec. 21, 2001). USCIS last adjusted the biometric fee on April 30, 2004 to $70. 69 FR 20528 (April 15, 2004).

Table 2 illustrates the history of the adjustments to the IEFA fee schedule and the biometric fee schedule.

TABLE 2.—HISTORY OF IMMIGRATION BENEFIT APPLICATION AND PETITION FEES

Form type	Prior to IEFA		FY 1989 (dollars)	FY 1991 (dollars)	FY 1994 (dollars)	FY 1998 (dollars)	FY 2002 (dollars)	FY 2004 (dollars)	Current fees (dollars)
	FY 1985 (dollars)	FY 1986 (dollars)							
I–90	15		35	70	75	110	130	185	190
I–102	15		35	50	65	85	100	155	160
I–129	35		50	70	75	110	130	185	190
I–129F	35		40	75	75	95	110	165	170
I–130	35		40	75	80	110	130	185	190
I–131	15		45	65	70	95	110	165	170
I–140	50	35	50	70	75	115	135	190	195
Waiver Applications	35		45	90	95	170	195	250	265
I–290B/Motions	50		110						385
I–360						110	130	185	190
I–485	50		60	120	130	220	255	315	325
I–526				140	155	350	400	465	480
I–539	15		35	70	75	120	140	195	200
I–600/600A	50		75	140	155	405	460	525	545
I–687				185	185	185	185	240	255
I–690							35	90	95
I–694	50						50	105	110
I–695				15	15	15	15	65	65
I–698	120						120	175	180
I–751			35	65	80	125	145	200	205
I–765			35	60	70	100	120	175	180
I–817				75	80	120	140	195	200
I–821	50						50		50
I–824				30	30	120	140	195	200
I–829					90	345	395	455	475
I–881							215	275	285
I–905									230
I–914							200	255	270
N–300	15		50			50	60	115	120
N–336						170	195	250	265
N–400	35		60	90	95	225	260	320	330
N–470	15		55			80	95	150	155
N–565	15		50	50	65	135	155	210	220
N–600/600K	35		60	90	100	160	185	240	255
Biometrics						25	50	70	70

C. Urgency and Rationale for New Fee Schedule

In developing this proposed rule, USCIS reviewed its recent cost experiences, current service levels, goals for additional services, and various factors for allocating costs to particular form types. This rule proposes a fee structure that will allow USCIS to close current funding gaps, accomplish performance goals, eliminate problematic incentives, expedite processing, and fairly allocate costs.

For FY 2008 and FY 2009, USCIS projects a continuing funding gap between revenue and expenses in the IEFA. Over the last several years, USCIS has come to rely on a combination of fee funding from temporary programs (*e.g.*, Temporary Protected Status, penalty fees under INA section 245(i), 8 U.S.C. 1255(i)) and appropriated subsidies for temporary programs (*e.g.*, backlog elimination) to close this funding gap. With the termination of these temporary funding sources, fee adjustments are needed to prevent significant service

reductions, backlog increases, and reduced investment in infrastructure. While the workload associated with these temporary programs will terminate along with the termination of its funding sources, significant fixed costs that were previously recovered through the fees still remain. This includes costs that do not directly vary with this temporary workload, including USCIS Headquarters office costs and asylum and refugee operations.

USCIS has received appropriated dollars for the past several years to improve processing times as part of a five year effort to reduce a backlog of immigration applications. In FY 2006, Congress appropriated $115 million for USCIS, subject to later rescissions. Department of Homeland Security Appropriations Act, 2006, 109–90, 119 Stat. 2064, 2080 (Oct. 18, 2005). In FY 2007, Congress appropriated $181,990,000 for USCIS. Department of Homeland Security Appropriations Act, 2007, 110 Stat. 1355, 1374 (Oct. 4, 2006). During the time since the last comprehensive fee adjustment, USCIS has increased emphasis on national security and public screening of applicants, and on quality controls. At the same time, certain immigration benefit determinations have become more complex as legislation has created new programs and eligibilities. This resulted in a significant funding gap between revenues and costs that led to decreases in performance and services. Because USCIS did not conduct a comprehensive fee review earlier, it has been limited to the revenue that the current fee structure provides. This funding gap has resulted in inadequate facilities to provide services to customers, inadequate investments in infrastructure to improve service, and, most notably, inadequate case processing capacity to keep up with the volume of applications and petitions filed, creating a very significant backlog that would still exist today if not for the temporary appropriated dollars received from FY 2002 to FY 2006. However, significant backlogs will recur unless USCIS restructures its fees to provide adequate case processing capacity.

Spending reductions to meet the funding gap would result in a reversal of the considerable progress USCIS has made over the last several years to reduce the backlog of immigration benefit applications and petitions. Such a reversal would likely include increases in customer complaints, requests to expedite certain applications and petitions, litigation seeking mandamus against USCIS, and other negative consequences that consume more resources in an ad hoc and reactive manner. This fee rule is essential to bringing fees into alignment with desired levels of service.

USCIS' security-related activities and objectives are its highest priority in allocating resources, and the effects of rising immigration benefit application backlogs could undermine these national security and public safety objectives. USCIS therefore places an emphasis on timely background checks to ensure that the United States is not placed at risk by failing to identify individuals who may be national security or public safety risks at the earliest possible time in the adjudications process. Backlogs allow some applicants and petitioners who are already in the United States to remain in the United States without authorization, and delay identification of potential risks and actions to initiate removal proceedings as appropriate.

Based on the current weighted average application/petition fee of $264 and a projected application/petition fee-paying volume of 4.742 million, immigration benefit application/petition fees will generate $1.250 billion in annual revenue for the FY 2008 and FY 2009 biennial period. For the same period, USCIS estimates the annual cost of processing those immigration and naturalization benefit applications and petitions, including additional resource requirements, will be $2.329 billion. The resulting annual funding gap between revenue and expenses is $1.079 billion, of which $524.3 million is additional resource requirements (see section IV.E for a detailed discussion of these requirements).

1. Delay in Performing a Comprehensive Fee Review

The fee changes proposed in this rule reflect a more robust capability to calculate, predict, and analyze costs and revenues. USCIS has not performed a comprehensive cost analysis of the IEFA since the FY 1998 Fee Review. The fact that a comprehensive fee review has been delayed for such a long period of time is a major reason why the current fee schedule is inadequate to recover the full costs of USCIS operations. This is a primary cause for the creation and growth of the immigration benefit application and petition backlog.

A Government Accountability Office (GAO) Report in January 2004 concluded that the ''fees were not sufficient to fully fund [US]CIS' operations.'' GAO, *Immigration Application Fees: Current Fees are Not Sufficient to Fund U.S. Citizenship and Immigration Services' Operations* (GAO–04–309R, Jan. 5, 2004) at 2. GAO stated that ''[i]n part, this has resulted because (1) The current fee schedule is based on an outdated fee study that did not include all costs of [US]CIS' operations and (2) costs have increased since that study was completed due to an additional processing requirement and other actions.'' *Id.* GAO recommended that USCIS ''perform a comprehensive fee study to determine the costs to process new immigration applications.'' *Id.* at 3. The fee review that is the basis for the proposed fees in this rule addresses that recommendation.

As noted by the GAO, USCIS currently incurs several significant costs that are not recovered in the current fee structure. These include a 2002 estimate of $101 million in costs incurred that any previous fee increases had not adequately addressed: Integrated Card Production System; National Customer Service Center; National Records Center; additional Adjudication Officers; and expansion of Service Center operations. *Id.* at 31. The GAO also identified the need to recover the costs of ''new departmental requirements,'' especially expanding the number of Interagency Border Inspection System (IBIS) checks conducted as a result of the September 11, 2001 terrorist attacks. *Id.* at 33. A portion of these costs were recovered in the April 2004 fee increase. GAO also suggested that USCIS identify and recover ''administrative and overhead'' costs associated with the creation of USCIS as a separate component within DHS in March 2003. *Id.* at 42–44.

Since fee revenues have not been sufficient to recover full operating costs, USCIS has relied on funding from temporary programs, curtailed spending in critical areas, used premium processing funds for base infrastructure rather than for major business infrastructure improvements to the adjudication and customer-service processes, and used fees from pending applications to fund applications being processed. This insufficiency delayed investment in a new technology and business process platform to radically improve USCIS' capabilities and service levels as originally envisioned by Congress when it first established the premium processing program.

2. Presidential Mandate To Eliminate the Backlog

In FY 2002, the President called for an average processing time standard of six months for the adjudication of most immigration benefit applications and petitions to eliminate the backlog of pending applications and petitions at USCIS within five years (end of FY 2006). USCIS received a total of $460

million in appropriated funds for this effort. At the end of FY 2006, the backlog was significantly reduced from a high of 3.84 million cases in January 2004 to 9,482 cases. Additionally, a six-month processing time standard was achieved for fifteen out of sixteen Backlog Elimination Plan applications. In some instances, such as naturalization applications, USCIS decreased processing times to below the six-month goal. Table 3 sets out the processing times (in terms of months) for each application and petition as of September 30, 2006. This fee rule would provide the necessary resources to maintain these processing time standards and fund further improvements to USCIS business operations to continue to reduce processing times while ensuring the appropriate level of security.

TABLE 3.—APPLICATION AND PETITION PROCESSING TIMES

Form No.	Processing time (in months)
I–90	4.38
I–102	2.91
I–129	2.03
I–129F	2.90
I–130	6.02
I–131	1.97
I–140	3.31
Waiver Applications	9.39
Form I–290B/Motions	7.73
I–360	6.34
I–485	7.07
I–526	4.14
I–539	2.07
I–600/600A	3.39
I–687	10.59
I–690	10.19
I–694	4.50
I–695	22.76
I–698	26.85
I–751	3.74
I–765	1.97
I–817	3.94
I–821	2.54
I–824	3.63
I–829	38.94
I–881	0.35
I–914	3.64
N–300	23.88
N–336	6.22
N–400	5.57
N–470	16.18
N–565	4.35
N–600/600K	5.27

The President's FY 2006 Budget prioritized USCIS resources to achieve the time standard and eliminate the backlog. After FY 2006, USCIS' budget requests for adjudication programs will be limited to fee resources, as USCIS strives to maintain the six-month or less processing time standard and identify opportunities for performance improvements within a fee-based environment.

As mentioned previously, the significant reduction in the backlog is due to temporary appropriated dollars. These funds were not only necessary to reduce the backlog that had grown prior to FY 2002, but also to make up for the insufficiency of the fee schedule. This was clearly made apparent in the FY 2005 budget when Congress appropriated an additional $60 million towards backlog elimination efforts due to the significant impact of the September 11th attacks on the United States on the standards, procedures, and policies of USCIS. Without this temporary subsidy, not only would the pre-FY 2002 backlogs continued to have grown, but the backlog would have grown even greater due to the insufficiency of the fee schedule to process incoming workload for the period FY 2002 through FY 2006.

3. Enhanced Staffing Models

The new fee schedule will improve service levels and ensure the security and integrity of the immigration system without causing backlogs to return. This fee review is based for the first time on an enhanced staffing model that is designed to align resources with the need to prevent future backlogs, providing for an efficient and effective workforce balance. Prior to this analysis, USCIS' distribution of adjudicators across field offices did not match the distribution of workload across field offices.

A 2001 GAO report recommended that USCIS ''[d]evelop a staffing model for processing naturalization applications and expand the model to include other application types as their processes are reengineered or automated.'' GAO, *Immigration Benefits: Several Factors Impede Timeliness of Application Processing* (GAO–01–488, May 4, 2001) at 55. In addition, in November 2005, GAO stated that:

> This kind of planning is consistent with the principle of integration and alignment that we have advocated as one of the critical success factors in human capital planning. As we have previously reported, workforce planning that is linked to strategic goals and objectives can help agencies be aware of their current and future needs such as the size of the workforce and its deployment across the organization. In addition, we have said that the appropriate geographic and organizational deployment of employees can further support organizational goals and strategies.

GAO, *Immigration Benefits: Improvements Needed To Address Backlogs and Ensure Quality of Adjudications* (GAO–06–20, Nov. 21, 2005) at 34.

Historically, USCIS has been required to balance resource requirements against budgetary realities with the end result often being a staffing model based on what USCIS could afford, not what is required to meet acceptable performance standards. Following the last comprehensive fee review in FY 1998, USCIS' predecessor was only able to maintain the status quo and the backlog actually increased despite significant fee increases in FY 1998. The clear distinction between this proposed fee schedule and prior fee schedules is that the proposed fee schedule does not simply reflect costs and performance retrospectively, locking USCIS into a revenue stream that at best allows it to maintain the status quo. Instead the proposed fee schedule is designed to provide for an adequate and sustainable level of investment in staff, infrastructure, and processes designed to improve the USCIS' ability to administer the nation's immigration laws.

The staffing model identifies sufficient funding not only to meet current standard processing time goals, but also to sustain and improve service delivery by providing additional funding to handle sudden surges in workload, another reason for the growth in immigration benefit application and petition backlogs. Sufficient capacity to process workload is a problem not limited to USCIS. Capacity also relates to agencies that USCIS depends upon to meet its performance goals. For example, this rule proposes additional funding in support of FBI name checks.

4. Isolation of Premium Processing Fees

The current fee system has not enabled USCIS to undertake the investments in a new technology and business process platform that are needed to radically improve USCIS' capabilities and service levels. The proposed fee structure is designed to recover annual costs for facilities, information technology systems, business processes, and other capacities in a way that allows USCIS to continue improving service levels, both to applicants/petitioners and to the American public, through more effective administration of the immigration laws of the United States. Under the proposed fee schedule, premium processing revenues will be fully isolated from other revenues and devoted to the extra services provided to premium processing customers and to broader investments in a new technology and business process

platform to radically improve USCIS' capabilities and service levels.

Specifically, premium processing fees will be used to transform USCIS from a paper-based process to an electronic environment, making it possible to incorporate more effective processing of low risk applicants and better identification of higher risk individuals. The new operational concept will be based on the types of online customer accounts used in the private sector in order to facilitate transactions, track activities, and reduce identity fraud. The solution will also help to meet customer expectations, generated from their private sector experiences, for on-demand information and immediate real-time electronic service over the Internet.

The solution will enable applicants to apply on-line for immigration benefits by either selecting a specific benefit application process or by participating in an on-line electronic interview that will help applicants navigate the system to apply for the correct benefit in the correct manner. Individuals, employers, and representatives will establish unique accounts that will enable them to change attributes such as changes of address or name, and allow individuals to record a change in marital status, representation, or other contact information. The solution will provide enhanced and real-time case status information with e-mail capabilities to request information or inform the applicant about a pending application and to enable the entire process to be completed in an efficient paperless manner.

In short, this proposed rule would fully fund normal operations and infrastructure maintenance with standard fees so that USCIS can apply premium fees to significant infrastructure improvements, as envisioned by Congress. Currently, because of the insufficiency of the fee schedule, USCIS cannot use premium processing funds to invest in major infrastructure improvements to the adjudication and customer-service processes.

5. Eliminating Perceptions of Impediments to Efficiency

This proposed rule would restructure certain fee arrangements that are currently perceived to provide disincentives for USCIS to improve efficiency in processing. For example, USCIS has long authorized certain customers, particularly applicants for adjustment of status, to apply for certain benefits while the initial application is pending, referred to generally as ''interim benefits.'' These include, most importantly, employment authorization and permission to travel abroad and return to the United States to pursue the pending application. In the current fee structure, USCIS charges additional fees for interim benefits in addition to initial application fees. Thus, the longer cases take to adjudicate, the more total revenue is collected. This creates the perception that USCIS gains by processing cases slowly.

Through the provisions proposed in this rule, USCIS would eliminate its reliance on interim benefits as a significant funding source for base operations and address the problem that aliens are required to pay for services they would not need if the underlying petition were timely processed, while ineligible and fraudulent applicants receive work authorization and travel documents because of processing delays. Moreover, this change addresses the historic perception that because of the Congressional requirement that USCIS be self-funded from fees, USCIS may make decisions that compromise operational efficiency to ensure revenue flow. Under the proposed fee structure, an applicant for adjustment of status will pay a single fee. If USCIS is unable to process the base application within the established processing goals, the applicant will not pay separate fees for interim benefits, no matter how long the case remains pending. For certain application types, most notably applications for adjustment of status to permanent residence (Form I–485), the most critical interim benefit is the fact an applicant is allowed to remain in the United States while his or her application is pending. This spurs USCIS to process cases quickly and ensure that it promptly identifies those applicants who are risks to national security or public safety, resolves their cases, and initiates removal proceedings as appropriate. The restructuring proposed under this rule would create more appropriate pricing structures and eliminate perceived disincentives to process cases in a timely manner.

At the same time, USCIS recognizes that, in some cases, delays in processing applications alone will require issuance of interim benefits. Accordingly, USCIS has built into the cost model for all adjustment of status applications the cost of processing interim benefits for a percentage of applicants.

USCIS estimates that the current application fees paid by an applicant for adjustment of status with interim benefits over a multi-year time period are approximately $800. The proposed rule would increase the adjustment of status application (Form I–485) fee for an adult applicant to $905, but exempts applicants who have paid that fee from any additional fee that otherwise might be payable to apply for advance parole or employment authorization. USCIS anticipates revising the Form I–485 accordingly, but this proposed rule would give USCIS flexibility to continue to use the Forms I–131 and I–765 for adjustment applicants. Either way, no additional fee would be charged for a Form I–485 applicant who has paid the base fee that now includes the cost of processing interim benefits.

Similarly, this rule proposes to eliminate from revenue projections separate fees from the two petitions currently required to be filed for an alien spouse abroad who will enter the United States in the K–3 nonimmigrant classification for certain spouses of United States citizens. *See* INA section 101(a)(15)(K)(ii), 8 U.S.C. 1101(a)(K)(ii); 8 CFR 214.1(a)(2). These two petitions are Form I–130, Petition for Alien Relative, and Form I–129F, Petition for Alien Fiancé(e). USCIS is working to consolidate the K–3 petitions so that separate fees will not be necessary.

The elimination of separate fees for interim benefits or the second K–3 petition affect more than adjustment of status applicants and family petitioners. The consolidation of these fees reduces the number of application types for which any fee is charged and thereby reallocates the amount of certain processing activity costs, administrative overhead and surcharge costs that must be spread across all other fee-paying application and petition types. All other fees will be increased.

6. Program Changes To Ensure Integrity of the Immigration System

Since the tragic events of September 11, 2001, a persistent issue has been that weaknesses in the integrity of the immigration system make the United States vulnerable to terrorism, crime, and the economic cost of an underground population. USCIS takes these concerns seriously and has aggressively addressed them with the creation of a new directorate for National Security and Records Verification (NSRV). This directorate is focused on preserving the integrity of the immigration system. One component of the new directorate is the Fraud Detection and National Security (FDNS) Division. FDNS fulfills its mission in a variety of ways that include conducting benefit fraud assessments, providing investigative support to Adjudication Officers, and implementing remedial processes to discourage fraud.

The current fee structure does not allow FDNS to address fraud more

broadly or to attend to USCIS' needs in national security cases. The proposed fee structure to support FDNS will fill this void. The proposed fee structure also enhances quality assurance, provides additional Adjudication Officer training, requires Adjudication Officers to attend removal proceedings when appropriate, tracks the delivery of secure documents, and enhances internal security and investigative operations. Section IV.E details these additional resource requirements.

7. USCIS' Commitment to Future Fee Reviews

USCIS is committed to update its fees through a similar analysis at least once every two years. In comparison to fee reviews over the last decade, which essentially made retrospective adjustments on a narrowly calculated fee review, future fee reviews will combine assumptions from recent experiences (which may allow for cost reductions from new efficiencies) and from prospective activity changes (such as those that may arise from additional security measures or performance changes).

D. Programs and Services Currently Funded

For FY 2007, the IEFA is anticipated to provide approximately 89% of USCIS' total funding. The major programs, activities and services funded by the IEFA are discussed below.

1. Adjudication Services

The Adjudication Services program is the primary program responsible for the processing of immigration benefit applications and petitions while ensuring the security of the immigration system. Through a network of 250 local offices, Application Support Centers, Service Centers, and Asylum Offices, the program funds the timely and quality processing of: (1) Family-based petitions—facilitating the process for close relatives to immigrate, gain permanent residence, work, etc.; (2) Employment-based petitions—facilitating the process for current and prospective employees to immigrate to or stay in the United States temporarily; (3) Asylum and Refugee processing—adjudicating asylum applications, conducting credible and reasonable fear screenings, and the processing of refugees; and (4) Naturalization—processing applications of those who wish to become United States citizens. The Adjudication Services program currently receives 94% of its total funding from the IEFA.

On average, USCIS annually: (1) Processes over six million applications and petitions, (2) processes close to 90,000 asylum applicants, (3) interviews approximately 70,000 refugee applicants, and (4) naturalizes approximately half a million new citizens. Adjudication Officers review applications and often conduct interviews of the applicants and petitioners. They have the dual responsibility of providing courteous service to the public while being alert to the possibility of security concerns, fraud, and misrepresentation. District Adjudications Officers are located in offices nationwide. Service Center Adjudications Officers are located only in the following Service Centers: St. Albans, VT; Lincoln, NE; Irving, TX; and Laguna Niguel, CA.

An Asylum Officer determines if an applicant for asylum qualifies for that status based on the requirements of the INA. These officers are specially trained in country conditions, interviewing techniques (including credibility determinations), and asylum law. Positions are located in eight Asylum Offices throughout the United States. The Asylum Officer Corps and new Refugee Officer Corps (which provides similar adjudicative services for refugee applications overseas) also leverage specialized resources, including professional interpreters, to deliver timely and accurate provision of legal protection to individuals who have been persecuted and displaced.

In coordination with other components of DHS and other Federal agencies, USCIS combats immigration benefit fraud through the FDNS office in the NSRV Directorate, as previously discussed. USCIS trains FDNS staff to analyze and identify fraud patterns and trends and document evidence of fraud for administrative action. USCIS will continue to implement fraud detection measures in Service Centers, field offices, and Refugee and Asylum programs, including training adjudications staff to proactively identify fraud/security profiles while considering an application. Apart from FDNS, the other major division within NSRV is the Office of Records Services (ORS), which establishes policies, procedures, and performance objectives for the USCIS Records Program. The Records Program manages over 160 million Alien-files and related records in support of the enforcement and benefits missions of the DHS. The ORS also manages the National Records Center and coordinates the USCIS Freedom of Information Act/Privacy Act (FOIA/PA) program.

2. Information and Customer Services

Through the Information and Customer Services Program, USCIS reduces the frequency of repeated, redundant applicant and petitioner contact with USCIS employees, thus improving USCIS efficiency. USCIS makes it easier for the public to get the information they need when they need it, through multiple channels of available assistance, including the USCIS Web site, toll-free call center (National Customer Service Call Center), and face-to-face appointments. On an annual basis, USCIS: (1) Handles over 14 million calls via the National Customer Service Call Centers, (2) receives 78 million ''hits'' on the USCIS Web site, and (3) serves approximately five million individuals through information counters at local offices. The Information and Customer Services program currently receives 52% of its total funding from the IEFA.

Each year millions of people apply for various types of benefits under the INA. The Immigration Information Officers (IIOs) provide information about immigration and nationality requirements; IIOs are not authorized to, and do not, provide legal advice to applicants and petitioners. IIOs assist with a wide variety of requests, including questions on how to complete required form types, and explain the administrative procedures and normal processing times for each application. IIOs provide a range of customer services, including certain case services and problem resolution assistance on applications and petitions. IIOs also process and make decisions on a limited array of applications and petitions. Positions are located throughout the country in Districts, Sub Offices, Asylum Offices, and Service Centers.

Through the National Customer Service Center, USCIS provides toll-free nationwide assistance to individuals calling from within the United States. Individuals can access live assistance from 8 a.m. until 6 p.m., Monday through Friday (local time; hours slightly different for those persons calling from outside the continental United States). They can also access recorded information (including information about the status of their specific case) 24 hours a day/7 days a week. Both live and recorded service are available in English and Spanish. Callers from outside the United States can access limited information through a separate toll number.

USCIS receives about 1.7 million direct information and customer service related contacts per month, or more than 20 million contacts per year.

Today, over 84% of all information and customer service interactions are self-service. The self-service options provide the public with new choices that are simpler and more effective to both the public and USCIS. They also save significant amounts of money compared to providing live assistance to all individuals.

In-person service continues, however, to be a critical component of the USCIS service model. To improve service levels, USCIS has shifted to offering most in-person service by appointment that is scheduled through USCIS' Web site. This has helped reduce long lines and wait times, and address public concerns and inquiries. USCIS also has developed and made available online a new series of focused fact sheets on available services to assist and communicate more clearly with the public.

3. Administration

Nine Headquarters offices provide administrative and mission support to Headquarters offices and USCIS field locations worldwide. The USCIS Administration program currently receives 100% of its total funding from the IEFA.

- The Office of Administration plans, develops, implements, and evaluates USCIS-wide policies and procedures for the operation of centrally managed, USCIS-wide support activities. It is responsible for programming, budgeting and oversight for the direct delivery of administrative support to USCIS in the areas of Acquisition, Procurement, Asset Management and Personal Property, Facilities and Real Property, and Logistics.
- The Office of Planning, Budget, and Finance is responsible for planning and budgeting integration and financial management activities.
- The Office of Chief Counsel consists of legal divisions advising and representing USCIS Operations both at Headquarters and in the field on behalf of the DHS General Counsel. Chief Counsel divisions include Adjudications Law, Refugee and Asylum Law, National Security, Commercial and Administrative Law, Ethics, Legislation, Field Offices, and Training, with each division responsible for reviewing, interpreting, and providing legal advice and litigation support to USCIS operational components.
- The Office of Citizenship promotes civic integration and instruction and training on citizenship responsibility for legal immigrants interested in becoming naturalized citizens of the United States, including development of educational materials and community outreach activities.
- The Office of Communications oversees and coordinates communication to internal and external stakeholders in order to empower employees with the tools needed to perform their jobs, to educate the public regarding USCIS benefits and services, and to facilitate consistent messaging for USCIS.
- The Office of Congressional Relations advises the Director on legislative matters and serves as the primary point of contact for members of Congress and congressional staffers.
- The Office of Policy and Strategy directs, prioritizes, and sets the agenda for USCIS-wide policy, strategy, and long-term planning activities, as well as research and analysis on immigration services issues.
- The Office of Security and Investigations (OSI) oversees secure communications and document storage, USCIS-wide physical and facility security programs, and security awareness training.
- The Office of Human Capital and Training manages human capital policy and operations and provides continuous professional training and career development to all USCIS employees through a variety of career, executive and managerial development programs.

IV. The Fee Review of Immigration Benefit Applications/Petitions and Biometric Services

The current immigration benefit application and petition fees are based on the FY 1998 Fee Review, adjusted for cost of living increases and other factors. The FY 1998 Fee Review model does not reflect today's accounting models, costs and processes have changed significantly since the FY 1998 Fee Review, and the current fees do not reflect today's costs and procedures. This proposed rule is based on a new cost model, and proposes enhanced service levels, more complete funding of existing services, and specific cost allocation methods.

A. Methodology

To develop this proposed rule, USCIS convened its Workload and Fee Projection Group. The Workload and Fee Projection Group is composed of subject matter experts throughout USCIS and statistical experts from the DHS Office of Immigration Statistics.

USCIS employed an Activity-Based Costing (ABC) methodology to determine the full cost of immigration and naturalization benefit applications and petitions, as well as biometric services, for which fees are charged. This is an improved version of the same methodology used in the FY 1998 Fee Review that is the basis for the current fee structure. ABC is a business management tool that provides insight into the relationship between inputs (costs) and outputs (products and services) by quantifying how work is performed in an organization (activities).

The ABC methodology uses a two-stage approach to assigning costs. The first stage assigns costs to activities, and the second stage assigns activity costs to products. For USCIS, the products are decisions on the immigration and naturalization benefit applications and petitions and the biometric services for which fees are charged. To implement this two-stage approach, ABC requires four analytic steps:

- Identifying and defining the activities involved in processing immigration and naturalization benefit applications and petitions and biometric services;
- Examining budgetary records/execution plans and additional resource requirements to identify the resources required to process immigration and naturalization benefit applications and petitions and biometric services;
- Assigning these resources to the defined processing activities; and
- Assigning processing activity costs to defined immigration and naturalization benefit applications and petitions and biometric services for which a fee is charged.

USCIS used commercially available ABC software in computing the immigration benefit application/petition and biometric fees. This software application is designed to assign costs through activities to final products (applications/petitions and biometric services). The data entered into the software were tailored to USCIS specifications using the preexisting software structure. This new software is vastly improved over any models previously used by USCIS, particularly because it can readily accept the most up-to-date information, as well as ''what-if'' scenarios, on a continual and real time basis for fee review and cost management purposes.

B. Assumptions

As previously discussed, USCIS is assuming that it will no longer collect separate fee revenues from certain interim benefits or K–3 petitions.

In this proposed rule, USCIS is assuming no revenues from certain penalty fees. INA section 245(i), 8 U.S.C. 1255(i), permits certain aliens who otherwise would be ineligible for adjustment of status to lawful

permanent residence (primarily because of their unlawful presence) to obtain such adjustment upon payment of a $1,000 penalty in addition to the base application fee. Section 245(i) adjustment of status is available, however, only to beneficiaries of immigrant petitions or applications for labor certification filed on or before April 30, 2001. As a result of this sunset provision, USCIS has seen a steady decline in these revenues over the last several years ($66 million in FY 2001; $37 million in FY 2003; and $21 million in FY 2006) and projects that an insignificant amount of penalty fees will be collected by the time the proposed fee structure is in place given the finite and declining number of people affected by this legislation.

USCIS does not anticipate any significant new Temporary Protected Status (TPS) populations at this time, although because of the nature of TPS (including, for example, response to natural disaster) USCIS cannot make such predictions with certainty. Given the statutory requirement that TPS status be periodically reviewed and the reasonable possibility of the termination of TPS designations for long-standing, high volume countries, USCIS must build its budgets on the assumption that it cannot rely on fee revenue from such programs to fund on-going activities. INA section 244, 8 U.S.C. 1254a. For planning purposes and without intending to forecast any particular policy assessments, USCIS has assumed that the TPS Program for re-registrants of certain nationalities will not continue, which will result in a substantial decline of volumes for Form I–821 (Application for Temporary Protected Status) and associated Form I–765 (Application for Employment Authorization). This assumption eliminates a limited source of fee receipts, but also reduces a larger amount of costs distributed across all other application fees because the statutory fee ($50) does not recover the full cost of processing TPS applications.

Finally, USCIS assumes the elimination of revenues associated with the Form I–881, Nicaraguan Adjustment and Central American Relief Act—Suspension of Deportation or Application Special Rule (NACARA 203). *See* Pub. L. 105–100, sec. 203, 111 Stat. 2196 (Nov. 19, 1997), as amended by Pub. L. 105–139, 111 Stat. 2644 (Dec. 2, 1997). This program provided a benefit for a finite group of people, the vast majority of whom are Guatemalans and Salvadorans who entered the United States prior to 1991 and who had an asylum application pending by specified deadlines in 1995 and 1996. Since enactment of NACARA, USCIS has adjudicated approximately 170,000 applications for relief under NACARA 203. USCIS projects that by the end of FY 2007, nearly all qualifying NACARA 203 applications will have been adjudicated, and that there will be virtually no filings in FY 2008 and 2009. USCIS projects a decline in the annual workload volume from approximately 22,509 applications in FY 2006, to fewer than 200 in FY 2007.

In FY 2001, the USCIS Asylum Division hired approximately 70 term employees to assist with the NACARA 203 workload. As the number of pending NACARA 203 applications and individuals still eligible to apply for this relief declined, the Asylum Division stopped back-filling term positions as they became vacant in order gradually to reduce the staffing level and budget commensurate with the decreasing workload. Thus, through attrition of the term employees, USCIS has been able to reach appropriate staffing levels for this workload. Cost adjustments associated with the workload were incorporated in the FY 2007 Enacted Budget.

USCIS also assumes no revenues from applications for T nonimmigrant status, or self-petitions under the Violence Against Women Act of 1994 (VAWA), Public Law 103–322, tit. IV, subtit. G, 108 Stat. 1796, 1902, 1953 (Sept. 13, 1994), as reauthorized and amended, as this proposed rule exempts applicants from paying the otherwise applicable fees for these benefits. T nonimmigrant status is available to aliens, and certain family members, who (in the case of principal aliens) are victims of severe forms of trafficking in persons, are physically present in the United States or a United States jurisdiction on account of the trafficking, have (if over the age of 18) complied with any reasonable requests for assistance to investigate or prosecute the trafficking, and would suffer extreme hardship involving unusual or severe harm if removed from the United States.

USCIS also assumes that the number of fee waiver requests will hold steady from FY 2006 levels. Although USCIS anticipates an increase in the number of fee waiver requests as a result of the proposed fee structure, this increase will be offset by the new fee waiver policy that limits fee waivers to certain situations as explained in section XI of this preamble. The number of fee exemption applications will increase over FY 2006 levels commensurate with new exemptions proposed in this rule (*e.g.,* certain initial applications for benefits for humanitarian reasons—VAWA or T Visa).

C. Defining Processing Activities

In ABC, activities are the critical link to assigning costs to products (decisions on applications/petitions and biometric services for which the USCIS charges a fee). USCIS used the following activities:

- *Inform the Public*, involving receipt and response to inquires through telephone calls, written correspondence, or walk-in inquiries;
- *Capture Biometrics*, involving electronic capture of biometric (fingerprint, photograph, signature) information, and background checks performed by the FBI;
- *Intake*, involving mailroom operations, data capture and collection, file assembly, fee receipting, and file room operations;
- *Conduct Interagency Border Inspection System (IBIS) Checks*, involving comparison of information on applicants, petitioners, beneficiaries, derivatives and others against various Federal lookout systems;
- *Review Records*, involving acquisition and creation of relevant files, consolidation of files, connection of returned evidence with application or petition files, movement of files upon request, and management of file location and archives;
- *Make Determination*, involving actual adjudication of applications and petitions, requests for additional evidence, interviewing of applicants, consultation with supervisors or legal counsel and researching applicable laws and decisions on complex adjudications, and recordation of decision;
- *Fraud Detection and Prevention*, involving detection, combat, and deterrence of immigration and naturalization benefit fraud; and,
- *Issue Document,* involving production and distribution of secure documents that identify the holder's immigration status or employment authorization.

D. Sources of Cost Information

The first step in implementing an ABC methodology is to identify the appropriate amount of FY 2008/2009 IEFA costs and assign these costs to the defined processing activities. USCIS began with the FY 2007 Enacted Budget (less non-recurring costs), adjusted for inflation for the FY 2008/2009 biennial period, and added resource requirements as the best available source of information for determining the full cost of immigration benefit applications/petitions and biometric services. The FY 2007 Enacted Budget ($1,760,000,000) best represents USCIS'

base resources since it is indicative of the costs incurred by USCIS today and adjusts the base for inflation from FY 2006 levels. Inflation is determined for this purpose by referring to Government-wide standards discussed below in section IV.E.2. The additional resource requirements are discussed below in section IV.E.3.

E. Adjustments

1. Non-Recurring Costs

USCIS first eliminated any spending items in the FY 2007 Enacted Budget that would not recur after FY 2007. Accordingly the base was reduced by $8.5 million associated with the temporary expansion of Application Support Centers for additional workload associated with a temporary planned program for the recall of green cards issued before 1989 and thus lacking expiration dates and up-to-date security features. After adjustment, the FY 2007 Enacted Budget has a base of $1,751,500,000.

2. Inflation

USCIS then adjusted the FY 2007 IEFA Budget ($1,751,500,000) enacted level for the FY 2008 and FY 2009 biennial period by pay (Federal employee payroll and benefits) and non-pay (contracts, utilities, rent, etc.) inflation factors used by OMB in implementing OMB Circular A–76 (Performance of Commercial Activities), found at *http://www.whitehouse.gov/omb/circulars/a076/a76_incl_tech_correction.pdf*.

The pay portion of the FY 2007 budget totals $727,600,000. The FY 2008/2009 blended pay inflation factor is 3.3%. This blended pay inflation factor is calculated using 2.2% for FY 2008 plus half of 2.2% (1.1%) for FY 2009. The pay inflation of $24,010,800 was then added to the FY 2007 base, yielding a FY 2008/2009 pay base of $751,610,800.

The non-pay portion of the President's FY 2007 Budget was $1,023,900,000. The blended non-pay inflation factor is 2.85%. The blended non-pay inflation factor is calculated using 1.9% for FY 2008 plus half of 1.9% (0.95%) for FY 2009. The non-pay inflation of $29,181,150 was then added to the FY 2007 base, yielding a FY 2008/2009 non-pay base of $1,053,081,150.

These pay and non-pay inflation projections of $53.192 million yield a FY 2008/2009 base of $1,804,691,950.

3. Additional Resource Requirements

USCIS also identified $524.3 million in additional resource requirements to fulfill legal requirements and policy decisions. These additional resource requirements involve costs above and beyond what was presented in the FY 2007 Enacted Budget, plus inflation for the FY 2008/2009 biennial period, that are necessary for USCIS to meet its mission responsibilities. ''Additional Resource Requirements'' represent enhancements that are not currently funded in the FY 2007 Enacted Budget. These include: (1) Service Enhancements, (2) Security and Integrity Enhancements, (3) Humanitarian Program Enhancements, and (4) Infrastructure Enhancements.

a. Service Enhancements.

USCIS is enhancing service to provide efficient and customer-oriented immigration and naturalization benefit and information services. The following enhancements will enable USCIS to achieve and maintain timely processing of immigration and naturalization benefits; provide information resources and services to appropriate individuals and entities; foster a customer-centered approach to service delivery; and develop seamless, information technology (IT)—supported processes that efficiently support immigration and naturalization benefits adjudication and information sharing:

Enhance adjudications and support staff to maintain application and petition processing times, officer training, additional capacity for unanticipated surges in workload, and process Notices to Appear. Additional funding is necessary to support a staffing model designed to align resources with the need to prevent future backlogs and provide for an efficient and effective workforce balance. This includes Adjudication Officers and support staff (Supervisors, Clerks, Immigration Information Officers, Records personnel, Administration personnel, and Quality Assurance Analysts). Current funding and the staffing model it supports are not sufficient to maintain prescribed processing time requirements. USCIS' staffing model incorporates additional requirements which include: (1) Additional time required of Adjudication Officers to attend removal proceedings when appropriate; (2) additional Adjudication Officer training to provide a 5% increase in USCIS' investment in employee training in order to maintain a more appropriate balance between the commitment to production and an ongoing investment in things, such as training, designed to improve qualitative performance; and (3) providing USCIS with a small surplus production capacity that gives USCIS flexibility to adapt to temporary increases in filings without those increases immediately affecting service levels to all applicants. USCIS' staffing model also provides capacity to improve processing times and service delivery over time rather than, at best, perpetuating current levels. This additional resource requirement addresses the need to reduce lengthy and costly waiting periods for determination of benefits and the need for relevant training and staffing to handle USCIS' substantial and complex workloads. This enhancement requires 1,004 staff and $123.8 million.

Process Freedom of Information Act requests. The Freedom of Information Act (FOIA), 5 U.S.C. 552, provides for the public disclosure of governmental records unless an exemption applies. USCIS' FOIA program has been historically understaffed, resulting in a growing backlog that is currently 82,000 cases. USCIS determined that approximately 82 positions (74 contractors and eight government staff) would be needed in order to reduce the backlog by 50% the first year and the remaining 50% during the second year. Also, USCIS determined that a total of 146 staff is necessary to keep pace with the average 120,000 cases per year workload. To reach the required level of staff to handle this continuing normal workload, an additional ten government staff are permanently needed. To meet the requirements of the FOIA to process 120,000 cases annually and eliminate existing while preventing new backlogs, this enhancement requires 18 staff and $8.8 million.

Provide Change of Address (AR–11) data entry services. Aliens, who enter the United States and are required to be registered, must notify DHS of any change of address within ten days, using Form AR–11. INA section 265, 8 U.S.C. 1305; 8 CFR 265.1. USCIS estimates that the costs to support AR–11 data entry operations will total $1 million ($83,300 per month). Over 480,000 AR–11 forms will be processed in FY 2008 (268,000 nonimmigrant and 212,000 immigrant). Additionally, system operations and maintenance costs are estimated to cost approximately $200,000 per year. This enhancement requires $1.2 million.

Print and distribute guidebooks for new naturalized citizens. USCIS currently prints and distributes a small quantity of two educational resources: A civics study guide, designed for naturalization applicants, that helps immigrants learn United States history and civics in preparation for the naturalization test; and the ''Citizen's Almanac,'' a document to be given to each new citizen at his or her naturalization ceremony, which presents America's most cherished

founding documents, Presidential quotes on citizenship, and other civics and history content. This enhancement requires approximately $900,000 and would allow USCIS to produce a larger quantity of these documents.

Enhance mail and file room support for the Administrative Appeals Office. The Administrative Appeals Office (AAO) produces appellate decisions that provide fair and legally supportable resolutions of individual applications and petitions for immigration benefits. This enhancement provides needed resources for the AAO's requirements for clerical support for the office's mail and file room operations. In addition to mail and file room support, contractors answer the telephone, obtain electronic records, update information in electronic databases, provide periodic reporting of receipts and completions, and conduct workload analysis. This enhancement requires $129,000.

b. Security and Integrity Enhancements.

Consistent with the President's and the Secretary's priorities, USCIS is enhancing the security and integrity of the immigration and naturalization system. The following enhancements will enable USCIS to ensure that benefits are granted only to eligible applicants and petitioners; deter, detect, and pursue immigration and naturalization benefits fraud; and identify and communicate immigration and naturalization-related information to partners in support of DHS strategic goals:

Establish a second, full-service card production facility and fully fund card production workload. The Federal Information Security Management Act (FISMA), Pub. L. 107–347, 116 Stat. 2899 (Dec. 17, 2002) (40 U.S.C. 11331; 44 U.S.C. 101 note, 3541–3549), and implementing directives require compliance with National Institute of Standards and Technology principles for critical systems for contingency planning. To meet these standards, USCIS must establish a second full-service card production site. The second facility will support day-to-day production as well as be available in the event of catastrophic failure. Finally, additional funding is included to fully fund card production requirements based on workload projections. To meet these requirements, USCIS is proposing to add four staff and $32.4 million.

Enhance fraud prevention and detection efforts. To meet its mandated responsibilities of enhancing fraud prevention and detection efforts, USCIS created the FDNS to implement, direct, and oversee anti-fraud and detection operations throughout USCIS. By focusing efforts on such initiatives as Benefit Fraud Assessments, FDNS is better able to acquire the information needed to determine the type, causes, and amount of fraud that exist, so as to focus efforts accordingly. FDNS has developed and implemented a joint anti-fraud strategy with Immigration and Customs Enforcement (ICE) for the referral of all suspected fraud cases. Due to the volume of referrals, only those cases meeting the ICE threshold (large conspiracies, multi-party, etc.) are accepted for criminal investigation. Since the majority of referrals do not meet the threshold, they are returned to FDNS for initiation of an administrative inquiry/investigation. Additionally, FDNS identifies systemic vulnerabilities and other weaknesses that could compromise the integrity of the legal immigration system by reviewing existing regulations, policies and procedures and offering corrective remedies where deficiencies exist. This enhancement requires 170 staff and $31.3 million.

Enhance the delivery of secure documents. USCIS currently delivers its secure documents (Permanent Resident Cards, Employment Authorization Documents and travel documents) through the United States Postal Service (USPS) first class mail. There is no process in place that enables USCIS to track their delivery and ensure that these documents are delivered to the proper recipient. Some beneficiaries claim not to have received their documents in the mail to avoid paying document replacement fees. USCIS and the USPS have partnered to develop and implement a process wherein the documents would be delivered via USPS priority mail (two to three day delivery) with delivery confirmation. The additional funding will enable USCIS to track delivery of each document and to respond to queries from applicants regarding the status of document delivery. This enhancement requires $31.6 million.

Pay increased costs due to the FBI for background checks. USCIS pays the FBI for fingerprint and name checks performed on certain immigration and naturalization benefit applications. USCIS needs the additional funds to align with the projected filing increases for Forms N–400 and I–90, less the projected decrease in Form I–485. USCIS will also be expanding the biometric service to applications for travel documents and petitions to remove conditions of residence (Forms I–131 and I–751). Finally, USCIS is providing additional funds to the FBI for name check costs to enhance services. This enhancement requires $12.4 million.

Enhance national security systems and processes. Funding is necessary to continue the enhancement of the FDNS Data System and other supporting systems. The development effort will enable FDNS to creatively leverage new technology to enhance the ability to centrally direct and oversee the resolution of background check hits pertaining to national security, egregious public safety, and fraud investigations. These data systems will be used by all FDNS employees and will assist in the adjudication of all cases with national security and fraud implications. This enhancement is also needed to provide for major enhancements and improvements to USCIS'/FDNS national security background check process (*i.e.* software, systems development and change management and training efforts). All systems efforts will be coordinated with the USCIS Transformation Office to ensure system integration. Additionally, these systems will facilitate FDNS in its data sharing efforts with law enforcement agencies and other authorized government offices. This enhancement requires $4 million.

Enhance Internal Security and Investigative Operations. Internal Security and Investigative Operations includes the conduct of investigations of allegations of misconduct for approximately 15,000 USCIS federal and contract employees located throughout the United States as well as many located overseas. Additionally, this program is charged with: preparation and delivery of relevant training to all USCIS employees; specific training for and oversight of selected collateral duty ''management inquiry representatives'' (or fact-finders); the conduct of and follow-up to program and office inspections geared toward the integrity of personnel, products and processes; coordination of efforts with companion investigative authorities; material contribution to the USCIS counter-intelligence program; and preparation of general and specific reports to USCIS executives. There are presently only a limited number of investigators for these activities. To keep pace with demand, to ensure professional and timely investigative activity and result, and to ensure proportional capability growth, USCIS requires an additional 60 field-based and five headquarters-based investigative staff resulting in a total of 78 investigative personnel. This enhancement requires 65 staff and $15 million.

Establish an Administrative Site Inspection Program. Funds are necessary to support an administrative site inspection program aimed at deterring fraud when USCIS has determined a systematic vulnerability. This initiative will enable the USCIS to secure contract support to conduct preliminary site inspections that will serve as an enhancement to the existing FDNS personnel's abilities to conduct administrative investigations and enable the FDNS staff officers to focus on high risk cases. Inspections have been identified as an invaluable tool in detecting fraud. This and other USCIS anti-fraud initiatives will help restore integrity to this Nation's legal immigration system. This enhancement requires $8 million.

Enhance Protective Security Operations. USCIS has or operates within approximately 281 facilities, 250 of which are located within the United States and 31 located overseas. Approximately 15,000 federal and contract employees work within and are associated with these facilities. There are presently only a limited number of Field Security Officers available to provide the full range of security services to protect USCIS operations, products, personnel and facilities. Current shortfalls in this critical activity increase the risks aimed at existing USCIS personnel, facilities, products and mission success. This enhancement requires 36 staff and $8.3 million.

Enhance existing card production program. The USCIS document production facility utilizes contractor support for its document production activities. The prime contractor on site is responsible for securing maintenance contracts on the equipment to ensure that all equipment runs optimally, without interruptions. Many companies will not prorate their maintenance contracts and want to have them funded on an annual basis, which becomes problematic when USCIS does not issue a full year of funding to its production contractor. Current funding mechanisms do not allow for contractor support during the full period of performance reflected in the contract, and result in inefficient use of both program office contracting officer technical representative time, and contract officer and administration time, as duplicative work needs to be performed each time additional funds are placed on the contract. The additional base requirement will enable USCIS to fund the production support contract for the full 12-month period of performance. By doing this, USCIS can ensure that secure document production can continue without disruptions associated with continuing resolutions and interim funding allocations that may develop at the beginning of new fiscal years. This enhancement requires $4.4 million.

Enhance Emergency Preparedness Operations; Establish Crisis Management and Information Security Operations; and Enhance Technology Security Operations. USCIS needs additional funds to prepare to continue essential operations and to recover from an event or incident and return to full operations. Funds are required to conduct Continuity of Operations (COOP) exercises and successful participation in and contribution to government COOP exercises. Continued refinement of training and presentation of that training to various audiences and at various locations is critical. Additional funding is also necessary to operate a certified full-time, real-time mission coordination and support capability for national security information control and communications throughout USCIS and with DHS and other agencies. This includes sustained operation and security of the Crisis Communications and Coordination Center on a real-time 24/7 basis to monitor USCIS operations throughout the world and to permit secure communications throughout the Federal government on behalf of USCIS executive leadership. Finally, additional funding is necessary, in conjunction with the USCIS Office of Information Technology, to review all USCIS IT efforts with specific focus on the security aspects of those efforts and systems, including expert forensic IT analyses related to internal investigations. Internal use of the data, and use of the data by external authorities, especially when required to address emergency incident situations, require an ongoing and certain commitment to the security features of its IT infrastructure and the data therein. This enhancement requires 14 staff and $3.0 million.

Enhance Personnel Security Operations. Additional funding is necessary to provide proper and timely security clearances for USCIS and contract employees; review of and contributions to USCIS acquisitions for goods and services; and coordination with other agencies and authorities to assure maintenance of current, accurate and complete personnel security information. This enhancement requires ten staff and $1.6 million.

c. Humanitarian Program Enhancements.

USCIS supports the United States' humanitarian commitments. This support includes fully funding the Cuban Haitian Entrant Program (CHEP). CHEP assists the resettlement of Cubans and Haitians who are irregular arrivals or paroled into the United States, including those who are paroled directly from Cuba under the Cuban Special Migration Program. In FY 2006, two non-government grant recipients, Church World Service and the United States Conference of Catholic Bishops, provided resettlement services. The actual number of migrants served each year is unpredictable, in part because many arrive irregularly. This enhancement requires $14 million.

d. Infrastructure Enhancements.

USCIS is strengthening the infrastructure necessary to achieve USCIS' mission. The following enhancements will enable USCIS to strengthen key management processes, systems, and administrative support activities, including information technology infrastructure; enhance the organization's ability to support the mission in an environment of fluctuating workloads and new external mandates; and manage financial resources strategically, including revenue, expenditures, and capital investments:

Upgrade and maintain the USCIS information technology environment. Additional funds are necessary to upgrade and maintain the USCIS information technology environment, which includes several programs in support of a national security-based immigration process that is more effective and customer focused. One of the programs will provide necessary technology upgrades to the current USCIS enterprise legacy IT systems so that these comply with OMB, GAO, DHS, and other Federal regulations, law, and guidelines. Decommissioning of the legacy environment systems is a lengthy process and, in the meantime, these systems are required to be upgraded to meet minimum standards in the areas of IT security and privacy.

Another program focuses on upgrading and maintaining the USCIS IT operating environment so that it can sustain continued operations, reduce IT security risks and information sharing limitations through hardware and software standardization, and maintain USCIS' ability to process cases and support Federal enforcement organizations. By having a more reliable IT environment, USCIS staff can better support applicants and petitioners.

The third program provides USCIS with the capability to implement quick turnaround IT solutions as well as feature/functional enhancements to the enterprise legacy IT environment to address time critical needs and legislative changes that occur on a

frequent and on-going basis. Funds are also necessary for other activities to provide additional trained and experienced IT Government staff, governance capabilities, IT security, continuity of operations planning and disaster recovery, and other IT oversight capabilities. This enhancement requires 88 staff and $124.3 million.

Rent and lease acquisition resources. Rental payments to the General Services Administration for USCIS facilities are currently budgeted at $153 million, but are projected to increase to $168 million. Thus, additional resources are required to fund projected FY 2008/FY 2009 payments. In addition, the Lease Acquisition Program (LAP) is the USCIS' Real Property Capital Assets Investment Plan. This program will improve workplaces to better meet USCIS mission and goals and better utilize real property assets. Current USCIS real property inventory includes 188 facility leases requiring sustainment from year to year. Most leases have a 10-year term and must be either renewed or replaced at the end of the term. Recent experience shows that 11 facility projects are required each year, either as a replacement for a non-renewable lease or for a renewal in the same facility but with additional space. USCIS currently has 37 leases that have already or will expire by FY 2008. The LAP currently is funded for $16.8 million based on the lease expiration schedule; the lease funding requirement is $34.9 million. The additional funding allows USCIS to increase its investment in facilities, so that its local offices can meet appropriate standards, and applicants/petitioners and others coming to those offices can be reasonably comfortable. This enhancement requires $33.1 million.

Enhance the training program for all USCIS employees to foster organizational individual achievement by promoting continuous learning. The additional funds will enable USCIS to expand both mission support and professional development modules available to all USCIS employees through online technology. The USCIS Learning Management System provides mandatory training modules, mission support modules, and more than 2000 commercial, Web-based, information technology, business, and leadership courses for personal and professional development. In addition, USCIS requires resources to plan and develop a comprehensive and continuing orientation plan for all USCIS employees. This program will serve as the primary vehicle for introductory, foundational and continuous information about DHS and USCIS leadership, mission, core values, vision, organizational structure and policies. It will also provide functional information about USCIS' business processes and practices, standard operating procedures and the cultural environment of a high-performance organization that is an employer of choice. This program will serve as a cornerstone for promoting employee career development, leadership development, and succession management. The project will also include the development of web-based orientation modules.

Finally, funds will be used to support an Enterprise Development Program that will provide USCIS government employees with an Individual Learning Account (ILA), which includes annual resources and time set aside exclusively for training. This program is seen as the primary means for employees to increase their knowledge, skill and capacity to perform their work and build careers consistent with USCIS goals for performance excellence. Such a program is designed to enhance critically needed training while taking advantage of USCIS transformational initiatives including the availability of new technologies and processes. This enhancement requires 25 staff and $41.2 million.

Enhance resources for the Office of Chief Counsel. Additional resources will be focused on filling the legal needs of USCIS' field offices, both district and regional, where most areas do not currently have any attorney on site. The provision of additional attorneys will allow USCIS to ensure that there is at least one attorney available in each district. All types of litigation continue to increase, including mandamus actions when USCIS is perceived to not respond to applications in a timely manner, employment, acquisition protests, and claims. Furthermore, there is a critical need to advise adjudicators and investigators on issues affecting national security concerns and citizenship qualifications. Attorney responsibilities include providing on-site legal advice on immigration benefits-related matters, adjudications involving issues of national security, visa appeal briefs, reviewing Notices to Appear, and providing litigation support to the Department of Justice's litigating divisions and United States Attorneys' Offices. Additional attorneys will also provide training to USCIS personnel on issues involving immigration related adjudications, inadmissibility and deportability. This enhancement requires 30 staff and $7.4 million.

Transfer records to the National Archives and Records Administration. The National Archives and Records Administration (NARA) has determined, pursuant to 44 U.S.C. 2905, that immigration records should become permanent records of the United States. Therefore, all immigration records that become eligible for retirement based upon the year of birth will be turned over in five-year ''collections.'' The first collection is to include records relating to persons born in 1907 or earlier. All records transferred to NARA must be inventoried. Due to the age of records and data integrity, the records must be audited and systems must be updated before the transfer. Therefore, $3.4 million is needed annually to audit the immigration records in preparation for the transfer of ownership of over 25 million records to the NARA to become permanent records. USCIS will begin transfer of all immigration records with 1907 year of birth and earlier beginning in 2008. This initiative will span a period of ten years. Future records will be transferred to NARA as they become eligible. This mandatory cost totals $3.4 million.

Fully fund the Human Resources and Occupational Safety and Health Service Level Agreements/Programs. Based on workload trends over the past three years, USCIS requires an additional $3 million that will allow the service provider, the Bureau of Customs and Border Protection (CBP), to provide additional capacity to handle human resources and occupational safety and health requirements. In addition, an additional $150,000 (fully-burdened costs) will allow USCIS to meet the requirement to provide every supervisor with occupational safety and health training. This enhancement requires $3.2 million.

Conduct policy evaluation and research. The Homeland Security Act of 2002 (HSA), Public Law 107–296, sec. 451, 116 Stat. 2135, 2195 (Nov. 25, 2002), requires that USCIS conduct policy research to develop sound information to inform and guide immigration program and policy development. In addition, the Government Performance Results Act of 1993 (GPRA), Pub. L. 103–62, 107 Stat. 285 (Aug. 3, 2003) (codified in various sections of titles 5 and 31 U.S.C.), requires agencies to evaluate pilot and experimental programs that are designed to improve mission delivery, including efficiency, national security and customer service, before implementing such programs on a large scale. USCIS requires funding to conduct targeted research and evaluation to develop and assess policy options affecting national immigration programs and policies and to assess

USCIS pilot programs. The mandated research and evaluation efforts will ensure prudent use of USCIS resources, enhanced information to inform policy options and impact assessment, and improved performance consistent with the stated GPRA and HSA requirements. This enhancement requires $3.1 million.

Enhance internal controls, build a data warehouse for performance information, enhance budget staff, conduct competitive sourcing reviews, and provide additional financial management resources to evaluate and analyze service level agreements under the auspices of the Office of Chief Financial Officer. In an effort to strengthen USCIS' planning and financial management functions, during FY 2006 USCIS created an Office of the Chief Financial Officer (CFO). The strengthened CFO function within USCIS ensures that reasonable internal controls exist within USCIS to safeguard assets from waste, fraud and abuse. In order to execute these duties, additional resources are necessary to review organizational program offices. The reviews require highly skilled personnel to assess internal USCIS components. The assessments identify vulnerabilities in program regulations, standard operating procedures, and work processes. This element of review is imperative as self-assessment is key to eliminating internal fraud, waste and abuse, as well as identifying inefficiencies and recommending corrective actions. In addition, funds sought will be used for additional staff to maintain the financial health and stability of the USCIS.

Finally, DHS mandated that USCIS, ICE and CBP establish service level agreements covering several core administrative support areas. While these service level agreements have been established, USCIS needs to strengthen oversight of the services performed and received. Several of the key factors that justify service level agreements, such as cost efficiencies, consistency in operational processing, and effective cross-agency communication require better monitoring. Funds will also be used for staff to evaluate and analyze service level agreements to gauge the benefits. Currently, performance evaluations/surveys are not initiated to ensure accountability and effectiveness or efficiency. This enhancement requires 16 staff and $3.1 million.

Establish a National Recruitment Program. Since its inception, USCIS has not had the resources to establish a National Recruitment Program (NRP). According to the Office of Personnel Management, the recruitment process for federal employers holds a number of challenges, one of which is the ability to replace an aging workforce. Over the next five years, over half of USCIS' workforce will be eligible for retirement. USCIS must be positioned to compete for talent in light of the retirement wave. The primary mission of the NRP will be to help management attract the right talent in order to ensure the employment of a high-quality and diverse workforce making USCIS an employer of choice. This enhancement requires three staff and $3.0 million.

Enhance procurement operations. The current procurement workload requires additional contract specialists. Currently, USCIS has only ten warranted contract specialists averaging 171 actions annually. USCIS procurement staff obligated approximately $605 million in new contractual actions in FY 2005, in addition to administering $4 billion in ongoing contracts. Also, the USCIS Office of Contracting recently assumed responsibility for the USCIS portion of several large contracts formerly administered by ICE. Continued understaffing poses significant internal control issues and increases the risk that limited contract dollars will not be used as effectively as possible. This request will double the size of USCIS' Office of Procurement. This enhancement requires ten staff and $1.6 million.

4. Summary

Table 4 summarizes the calculation of the FY 2008 / 2009 costs at the $2.329 billion (rounded to the nearest million).

TABLE 4.—FY 2008/2009 IEFA COSTS

FY 2007 IEFA Budget	$1,760,000
Less: Non-Recurring Costs	(8,500)
FY 2007 Adjusted IEFA Budget	1,751,500
Plus: Inflation	53,192
Plus: Additional Resource Requirements	524,317
Total	2,329,000

F. Determining Application and Petition Surcharge Costs

Asylum/Refugee and fee/exempt costs are referred to as ''surcharges'' since they are not directly related to the processing activity costs of a particular immigration benefit. These costs must be ascertained and then applied to all fee-paying applications.

1. Asylum and Refugee Costs

Congress has authorized USCIS to set its immigration benefit application and petition fees at a level that recovers sufficient revenue to provide asylum and refugee services. INA section 286(m), 8 U.S.C. 1356(m). USCIS determined the asylum and refugee surcharge costs to be $191 million or 8% (including $14 million for the Cuban Haitian Entrant Program as identified in the ''Additional Resource Requirements'' section in part IV.E) of the FY 2008/2009 IEFA Costs.

2. Fee Waiver/Exemption Costs

Congress has authorized USCIS to set its immigration benefit application and petition fees at a level that recovers sufficient revenue to provide services to other immigrants at no charge. INA section 286(m), 8 U.S.C. 1356(m). Eligible applicants and petitioners are granted fee waivers if they can establish that they are unable to pay the fee. In addition, asylum and refugee applicants are exempt from paying the fee for certain immigration benefit applications and petitions. This amount also includes fees received from applicants residing in the Virgin Islands of the United States and in Guam, since these fees are paid over to the treasuries of the Virgin Islands and Guam per section 286(m) of the INA, 8 U.S.C. 1356(m). USCIS determined the full costs of fee waivers and exemptions by subtracting the workload volume from the fee-paying volume of each application/petition, and multiplying that amount by the proposed fee. USCIS determined the fee waiver/exempt costs to be $150 million or 6% of the FY 2008/2009 IEFA Costs.

G. FY 2008/2009 Processing Activity Costs

The amount of immigration and naturalization benefit application and petition and biometric costs that were

assigned to processing activities was determined by adjusting the FY 2008/2009 IEFA costs by the costs attributable to the asylum/refugee and fee waiver/exemption services.

Table 5 summarizes the total of $1.988 billion assigned to processing activities (dollars in thousands):

TABLE 5.—FY 2008/2009 PROCESSING ACTIVITY COSTS

FY 2008/2009 IEFA Costs	$2,329,000
Less: Asylum and Refugee Services	(191,000)
Less: Fee Waiver and Exempt Services	(150,000)
Total	1,988,000

V. Volumes

USCIS used two types of volume data in the fee review. The first is workload volume (measured in terms of the number of incoming applications and petitions) that was used as one of the main cost drivers for assigning processing activity costs to immigration and naturalization benefit applications and petitions (explained further in section VII.B). The other is fee-paying volume data that was used as the denominator in the equation to calculate the immigration and naturalization benefit application and petition and biometric service unit costs.

A. Biometric Services

Projected volume decreases from the FY 2006 levels include a projected decline of 304,086 in associated biometric services for TPS. As mentioned previously, USCIS will not assume that the TPS Program for re-registrants of certain nationalities will continue. USCIS also projects a workload volume decline of 22,509 associated with the conclusion of NACARA filings. In addition, USCIS projects a decrease of 119,075 in corresponding biometric service volume given the decrease in Form I–90 (130,124), less the increases in Form N–400 (4,074) and Form I–485 (6,975). This issue is explained in the next section. These decreases are offset by an increase in biometric services of 282,000 since USCIS will be expanding biometric services to the Form I–131 (Refugee Travel Document, Reentry Permit only) and Form I–751 (Petition to Remove the Conditions on Residence) in FY 2007. This was not projected in the FY 2007 IEFA budget. The overall projected decrease in biometric services from FY 2006 levels is 163,670. Given a workload volume of 3,318,000 in FY 2006, the projected FY 2008/2009 workload volume is 3,154,330. Also, given the fee-paying volume of 2,359,482 in FY 2006, the projected FY 2008/2009 fee-paying volume is 2,195,812.

B. Immigration Benefit Applications and Petitions

As previously stated, this rule proposes to eliminate USCIS' operational dependency on certain interim benefit fees. Interim benefits are associated with the Form I–765, Application for Employment Authorization, and Form I–131, Application for Travel Document (Advance Parole only), that are issued to individuals on request while their applications for adjustment of status to permanent residence (Form I–485, Application to Register Permanent Status or Adjust Status) are pending. USCIS' analysis of interim benefits associated with a pending Form I–485 identified a total fee-paying volume decrease of 517,000 applications (317,000 Form I–765 and 200,000 Form I–131). This proposed rule eliminates separate fees for interim benefits for applicants for adjustment of status to permanent residence.

As previously mentioned, this proposed rule eliminates K–3 (certain spouses of United States citizens) petition fees associated with Form I–129F. USCIS' analysis of K–3 petitions identifies a volume decrease of 20,997 in the total number of fee-paid Form I–129F as a result of this change.

USCIS also will not assume that TPS for re-registrants of certain nationalities will continue, resulting in an assumed decline of volumes for Form I–821 (Application for Temporary Protected Status) and Form I–765. As such, USCIS projects a decrease in volume of 304,086 for each of these benefits, with the fiscal effect adjusted by the fact that there is no fee charged for the Form I–821 for re-registrants.

USCIS projects that there will be no filings for Form I–881, Nicaraguan Adjustment and Central American Relief Act—Suspension of Deportation or Application Special Rule (NACARA 203) in FY 2008 and 2009, for a workload volume decline of 22,509 (from 22,509 in FY 2006 to zero). The fee-paying volume decline is 22,487.

Projected volume increases are the product of projections from the USCIS Workload and Fee Projection Group—similar to the FY 1998 Fee Review. USCIS leveraged a time series model based on a regression analysis over the last 15 years, with the most recent data trends given the greatest weight. USCIS then adjusted this data based on known or projected program, policy, or other factors that would impact the analysis. The Workload and Fee Projection Group mainly focused on the applications and petitions that comprise the majority of the workload. For the remainder of the workload, USCIS used FY 2006 actual volumes for the FY 2008/2009 biennial period. The Workload and Fee Projection Group did not foresee a reason to change these figures from FY 2006 levels since this was a fairly typical year.

The Workload and Fee Projection Group projected an overall decrease of 391,824 in immigration benefit application and petition volumes over FY 2006 levels due to projected decreases in Form I–129 (17,955), Form I–130 (3,189), Form I–131 (32,880), Form I–140 (5,158), Form I–539 (13,531), Form I–687 (workload of 37,778; fee-paying of 36,756), Form I–765 (162,583), Form I–90 (130,124), less increases projected in the Form I–485 (6,975), Form N–400 (4,074), and other form types (325).

Finally, USCIS is proposing to exempt applicants from paying a fee from certain initial applications for benefits for humanitarian reasons. This includes all applicants filing Form I–914 (124 fee-paying applications), Application for T Nonimmigrant Status, and Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, who seek immigrant classification under VAWA (8,813 fee-paying applications). These applications have in common the fact that they are filed by victims of crime who are often in an extremely vulnerable position. Many of these applicants are already in a position to qualify for an individual fee waiver, and waiving fees more generally for these relatively low-volume applications will save the adjudication time necessary to consider fee waivers individually, and will serve the public interest without undue cost to other applicants as a

result. The costs associated with these exemptions increase the surcharge for fee exemptions, and are added to all applications in accordance with the methodology identified in section VIII.

In sum, the overall projected workload decrease in immigration benefit applications and petitions from FY 2006 levels is 414,317. Given a total workload volume of 5,991,362 in FY 2006, the projected FY 2008/2009 total workload volume is 5,577,045. The overall fee-paying decrease is 960,204. Given the total fee-paying volume of 5,702,571 in FY 2006, the projected FY 2008/2009 total fee-paying volume is 4,742,367 (includes additional fee exemptions for humanitarian reasons outlined above).

USCIS' projections show a decline in the total volume of applications. However, staffing requirements to handle this work increase relative to current levels because the current staffing level is based on what USCIS can afford, not what is required to meet acceptable performance standards. That situation contributed to large backlogs in the past. As stated previously, USCIS was only able to catch up temporarily through the infusion of a large temporary subsidy of appropriated dollars that allowed USCIS to temporarily acquire sufficient capacity to handle the work.

Table 6 summarizes the FY 2006 actual workload volumes, the projected FY 2008/2009 biennial workload volumes, and the difference by application/petition.

TABLE 6.—WORKLOAD VOLUMES BY APPLICATION/PETITION

Form No.	FY 2006 actual workload volume	FY 2008/2009 projected workload volume	Difference
I–90	682,149	552,025	(130,124)
I–102	24,139	24,035	(104)
I–129	417,955	400,000	(17,955)
I–129F	66,177	66,177	.....
I–130	747,012	743,823	(3,189)
I–131	371,880	339,000	(32,880)
I–140	140,158	135,000	(5,158)
Waiver Applications	45,459	45,459	.....
Form I–290B/Motions	47,645	47,645	.....
I–360	16,086	16,000	(86)
I–485	606,425	613,400	6,975
I–526	600	600	.....
I–539	233,531	220,000	(13,531)
I–600/600A	29,500	29,601	101
I–687	38,278	500	(37,778)
I–690	3,293	3,293	.....
I–694	3,696	3,696	.....
I–695	29	56	27
I–698	831	494	(337)
I–751	143,360	143,000	(360)
I–765	1,462,583	1,300,000	(162,583)
I–817	5,762	5,762	.....
I–824	40,105	40,785	680
I–829	88	88	.....
I–881	22,509	.....	(22,509)
I–905	2	10	8
I–914	403	400	(3)
N–300	91	100	9
N–336	13,692	14,000	308
N–400	730,642	734,716	4,074
N–470	669	669	.....
N–565	31,902	32,000	98
N–600/600K	64,711	64,711	.....
Total	5,991,362	5,577,045	(414,317)

To calculate unit costs, USCIS identified the number of fee-paying volumes for each application/petition and biometric fee by dividing the actual fee revenues received in FY 2006 by the FY 2006 fee. USCIS then adjusted this number to reflect the filing trends in FY 2007, which is reflected in Table 7.

TABLE 7.—FEE-PAYING VOLUMES BY APPLICATION/PETITION

Form No.	FY 2006 actual fee-paying volume	Adjustment	FY 2008/2009 projected fee-paying volume
I–90	640,529	(130,124)	510,405
I–102	22,486	(104)	22,382
I–129	417,712	(17,955)	399,757
I–129F	65,728	(20,997)	44,731

TABLE 7.—FEE-PAYING VOLUMES BY APPLICATION/PETITION—Continued

Form No.	FY 2006 actual fee-paying volume	Adjustment	FY 2008/2009 projected fee-paying volume
I–130	743,741	(3,189)	740,552
I–131	365,048	(232,880)	132,168
I–140	134,901	(5,158)	129,743
Waiver Applications	45,459		45,459
I–290B/Motions	47,645		47,645
I–360	13,671	(8,899)	4,772
I–485	548,035	6,975	555,010
I–526	600		600
I–539	229,160	(13,531)	215,629
I–600/600A	29,159	101	29,260
I–687	37,256	(36,756)	500
I–690	3,293		3,293
I–694	3,696		3,696
I–695	25	27	52
I–698	668	(337)	331
I–751	130,529	(360)	130,169
I–765	1,339,126	(479,583)	859,543
I–817	5,762		5,762
I–824	39,551	680	40,231
I–829	45		45
I–881	22,487	(22,487)	
I–905	2	8	10
I–914	124	(124)	
N–300	83	9	92
N–336	13,640	308	13,948
N–400	706,387	4,074	710,461
N–470	669		669
N–565	30,643	98	30,741
N–600/600K	64,711		64,711
Total	5,702,571	(960,204)	4,742,367

VI. Assigning Costs to Processing Activities

USCIS uses a detailed operating plan to manage its resources effectively. The plan identifies the payroll (pay and benefits, awards, overtime) and non-payroll costs (general expenses, information technology, contracts) associated with each USCIS office, as well as costs that are managed and funded centrally such as rent, information technology operations and maintenance, and service level agreements. The operating plan is a vast improvement over the cost data used in the FY 1998 Fee Review, where the information was only available at very high levels conglomerating various functions.

Each USCIS office was classified as ''overhead'' versus ''direct.'' This classification was performed since direct cost items can be directly ''assigned'' to activities based on a relationship that is readily identifiable between the cost item and a processing activity. For example, an Adjudications Officer performs work under the ''Make Determination'' activity. Therefore, the costs associated with an Adjudications Officer are directly assigned to this activity. Overhead cost items are ''allocated'' to activities since no direct relationship can be developed between the resource item and the activity. For example, there is no direct relationship between the Office of Planning, Budget, and Finance and the ''Make Determination'' activity, and as such, a portion of the costs from this office were allocated to the ''Make Determination'' activity based on number of government staff, as was the case with most overhead cost items.

A. Overhead Costs

USCIS defined overhead as ''the ongoing administrative expenses of a business which cannot be attributed to any specific business activity, but are still necessary for the business to function.'' Examples include the majority of Headquarters functions such as the Office of Planning, Budget, and Finance, the Office of Information Technology, the Office of Chief Counsel, the Congressional Relations Office, and the Office of Policy and Strategy. These offices are further identified in section III.D under the ''Administration'' program. Field functions classified as overhead include support positions such as management, administration, analysts and information technology staff. Centrally managed costs such as rent, information technology operations and maintenance, and service level agreements were also classified as overhead.

Total overhead costs were identified to be $924 million, of which $183 million is payroll (20%) and $741 million is non-payroll (80%). Total overhead costs represent 39% of the FY 2008/2009 IEFA costs. This includes $41.2 million to enhance the training program, $33.1 million for rent and lease acquisition resources, and $124.3 million to upgrade and maintain the USCIS information technology environment as identified in section IV.E.3. USCIS assessed a total of $843 million ($924 million less $81 million associated with the asylum and refugee program) in overhead costs as a flat percentage of each application/petition and biometric processing activity costs. While the amount of the overhead will vary between processing activities, the percentage of cost is constant.

B. Direct Costs

USCIS reviewed and analyzed the FY 2008/2009 IEFA costs in detail to determine which direct items could be

directly assigned to the immigration benefit application/petition and biometric service processing activities. The following depicts the major direct cost items assigned to the processing activities:

Inform the Public. Of the $1.988 billion assigned to immigration benefit application/petition and biometric service processing activities, $228 million or 11% is assigned directly to the ''Inform the Public'' activity. ''Inform the Public'' includes $43 million for the National Customer Service Center contract and support activities to provide nationwide assistance by telephone to individuals calling from within the United States about immigration services and benefits. Most of the $80 million in direct payroll costs (including $9.5 million of the $123.8 million to enhance adjudications and support staff as identified in section IV.E.3) are for IIOs who assist persons with information necessary to complete required form types and explain the administrative procedures and average processing times for each application/petition.

Intake. Of the $1.988 billion assigned to immigration benefit application/petition and biometric service processing activities, $86 million or 4% is assigned directly to the ''Intake'' activity. ''Intake'' includes $84 million for activities related to the mail, filing, data entry, and fee receipting at USCIS Service Centers. It also includes $2 million for the lockbox, which is an agent of the Department of Treasury that performs the electronic fee receipting, fee deposit, and initial data entry for specific form types.

Conduct IBIS Checks. Of the $1.988 billion assigned to immigration and naturalization benefit application and petition and biometric service processing activities, $48 million or 2% is assigned directly to the ''Conduct IBIS Check'' activity. Since July 2002, USCIS has added security checks to the processing of all immigration and naturalization benefit applications and petitions. ''Conduct IBIS Check'' includes $23 million in direct payroll costs of Adjudication Officers and other authorized personnel to compare information on applicants, petitioners, beneficiaries, derivatives and household members who apply for an immigration or naturalization benefit on a USCIS application or petition against various Federal lookout systems.

Review Records. Of the $1.988 billion assigned to immigration benefit application/petition and biometric service processing activities, $214 million or 11% is assigned directly to the ''Review Records'' activity. ''Review Records'' includes $54 million in direct payroll costs to oversee records operations (including processing Freedom of Information Act (FOIA) requests) in Headquarters, the National Records Center (a centralized facility for storing alien records), and field offices. This activity covers $8.8 million in new funding to process FOIA requests (as identified in section IV.E.3), a $17 million records support contract to maintain records at local field offices, $13 million in contract support staff in support of the Harrisonburg File Facility for receipt file holdings, and the National Archives and Records Administration contract for the retirement of alien files, among other records activities.

Make Determination. Of the $1.988 billion assigned to immigration benefit application/petition and biometric service processing activities, $1.058 billion or 53% is assigned directly to the ''Make Determination'' processing activity. This activity includes $421 million in direct payroll costs for Adjudication Officers and support personnel (including $78.2 million of the $123.8 million to enhance adjudications and support staff as identified in section IV.E.3), $24 million for field office discretionary general expenses, $13 million for field office overtime, $50 million for investment technology field support contract, $3.2 million for field training, $23 million for the National Benefits Center contract, $21 million for the adjudications clerical contract in support of field offices, and $11.5 million in Application Support Center contract costs in direct support of processing the Form I–90 (Application to Replace Permanent Resident Card).

Fraud Detection and Prevention. Of the $1.988 billion assigned to immigration and naturalization benefit application and petition and biometric service processing activities, $90 million or 5% is assigned directly to the ''Fraud Detection and Prevention'' activity. This activity includes $50 million in payroll costs for Immigration Officers and Intelligence Research specialists to detect and combat immigration and naturalization benefit fraud. The activity also includes $31 million in additional government staff for fraud prevention and detection efforts, $8 million for a new Administrative Site Inspection Program, and $4 million in system enhancements to national security systems and processes (as identified in section IV.E.3).

Issue Document. Of the $1.988 billion assigned to immigration and naturalization benefit application/petition and biometric service processing activities, $90 million or 5% is assigned directly to the ''Issue Document'' activity. The ''Issue Document'' activity involves work performed at centralized facilities to produce secure cards for certain immigration benefits. This includes $20 million for the Integrated Card Production system, including the contract, consumables, and information and technology operations and maintenance. The activity also includes $32.4 million for a backup card production facility, and $31.6 million for the enhanced delivery of secure documents (as identified in section IV.E.3).

Capture Biometrics. Of the $1.988 billion assigned to immigration and naturalization benefit application and petition and biometric service processing activities, $174 million or 9% is assigned directly to the ''Capture Biometrics'' activity. The ''Capture Biometrics'' activity includes $74 million in contract costs and $12.5 million in direct payroll costs (most of which is for Application Support Center managers) of operating the Application Support Centers to electronically capture applicants' fingerprints, photographs, and signatures. This activity also includes $63 million (including $12.4 million for increased costs associated with an overall increase in projected biometric workload as well as an increase in FBI background check costs passed on to USCIS through an interagency agreement, as identified in section IV.E.3) in costs paid to the FBI to conduct the appropriate background checks of fingerprints and/or applicant names (depending upon the immigration benefit). This is a change in the manner in which USCIS currently calculates the biometric fee since FBI background check costs were previously included in the immigration benefit application/petition fees. USCIS believes this is a more accurate methodology since there is a direct relationship between the biometric workload and the costs paid to the FBI. In addition, under this method, applicants and petitioners directly bear the costs of FBI background checks, as is the case today.

The FY 2008/2009 IEFA costs by processing activity are summarized in Table 8 (dollars in thousands).

TABLE 8.—FY 2008/2009 COSTS BY PROCESSING ACTIVITY

Activity	Amount (000)
Capture Biometrics	$174,000

TABLE 8.—FY 2008/2009 COSTS BY PROCESSING ACTIVITY—Continued

Activity	Amount (000)
Inform the Public	228,000
Intake	86,000
Conduct IBIS Checks	48,000
Review Records	214,000
Make Determination	1,058,000
Fraud Detection and Prevention	90,000
Issue Document	90,000
Total	1,988,000

VII. Assigning Processing Activity Costs to Applications and Petitions and Biometric Services

In ABC, the final stage in the process is assigning the processing activity costs to the products. The products are decisions on the immigration and naturalization benefit applications and petitions and biometric services for which USCIS charges fees.

A. Biometric Services

The ''Capture Biometrics'' processing activity was assigned directly to the biometric fee. The unit cost for this activity, and the biometric fee, is $79 based on total costs of $174 million and a fee-paying volume of 2.196 million. The other processing activities represent the basic components of processing immigration and naturalization benefit applications and petitions.

B. Immigration Benefit Applications and Petitions

In general, the more complex an immigration or naturalization benefit application or petition is to adjudicate, the higher the unit costs. This is because the largest processing activity cost, ''Make Determination,'' was assigned to the various immigration and naturalization benefit applications and petitions by a factor of workload volume weighted by completion rate (hours per completion). Workload volume is the measure of how many times an activity is performed for a particular product (number of application/petitions and biometrics received in a fiscal year), and ''completion rate'' measures the average adjudicative time or ''level of effort'' needed to perform the activity for a particular product, since time is a key factor in determining immigration benefit application and petition fees. The completion rates were based on the most recent data available from the period of September 2005–August 2006. Exceptions to this general rule occur when: (1) Volumes skew the unit costs (*e.g.*, high volume applications tend to have lower unit costs since costs are allocated over a higher volume base), (2) additional activities were performed (*e.g.*, some applications require the creation of secure cards); and 3) applications and petitions with low volumes were increased only by the weighted average fee increase (discussed below).

For the processing activities of ''Inform the Public,'' ''Intake,'' ''Conduct IBIS Check,'' ''Review Records,'' ''Fraud Prevention and Detection'' and ''Issue Document,'' the applications and petitions reflect the same average unit processing activity costs for each activity. The ''Issue Document'' processing activity costs were allocated only to those applications for which a secure document is required. This is a departure from the basis of the current fees since the current unit processing activity costs vary for every immigration benefit application and petition. USCIS decided that this was the best allocation method since these processing activity costs are not particularly driven by the complexity of the application/petition, and also to minimize the dollar impact on the more complex applications and petitions (which already will carry higher fees due to their complexity).

As explained previously, USCIS assumed no separate interim benefit fees from Form I–485 applicants, and thus added interim benefit costs from the ''Make Determination'' activity into the cost of the Form I–485, the primary immigration benefit application for which interim benefits are relevant. USCIS accomplished this by adding the completion rates for the Forms I–765 and I–131 to the Form I–485 completion rate. As a result, the costs for the ''Make Determination'' activity for the Form I–485 received more of those costs, including associated overhead costs, than it normally would have without factoring in interim benefits. USCIS believes this is a fair and equitable methodology since applicants, when filing a Form I–485, would also pay for the processing costs of interim benefits, and would not be required to pay for surcharges, other processing activities, and associated overhead costs more than once as they do today. Interim benefit costs outside the ''Make Determination'' processing activity were distributed to the other immigration benefit applications and petitions in accordance with the general methodology. Also explained previously, in anticipating the elimination of duplication in the K–3 petition process, USCIS assumed no revenues from Form I–129F as it relates to the K–3 classification, depending instead on one petition on Form I–130. This, too, has the effect of redistributing costs relating to the K–3 classification over all other form types.

USCIS leveraged ''completion rates,'' reflective of hours per completion, to identify the adjudicative time required to complete specific form types. The rate for each form type represents an average, as some cases within certain form types are more complex than others. Completion rates reflect what is termed ''touch time'' or the time the Adjudication Officer is actually handling or touching the case. Completion rates are not reflective of ''queue time'' or time spent waiting, for example, for additional information or supervisory approval. ''Touch time'' and ''queue time'' are different from ''processing time,'' which reflects the total time applicants and petitioners can expect to await a decision on their case once the application or petition is received by USCIS. Even though the completion rates for select applications and petitions have increased since the FY 1998 Fee Review, as referenced in section X, processing times have decreased for the majority of form types.

All Adjudication Officers are required to report completion rate information. In addition to using this data in determining fees, completion rates are a key factor in determining local office staffing allocations to match resources and workload since the type of workload (and amount) dictates the resource requirements. For this reason, the data are scrutinized both at the local office and regional level by management, and by the Performance Management Branch (PMB) at the Headquarters level to ensure data accuracy. When the data reported are found to be inconsistent with other offices, or inconsistent with prior reported data, PMB will contact the reporting office and make any necessary adjustments. USCIS also places confidence in the data, given the consistency of reporting it has witnessed over the last few years. The fact that this information is now available on a continual basis makes it easier for USCIS to update cost information more frequently for fee review and cost management purposes. This methodology is substantially superior to that available for the FY 1998 Fee Review, where it was necessary to use a method of physical observations (based on a statistically valid sample).

Local Office, Service Center, and the National Benefit Center completion rates, reflected in terms of hours per completion, are summarized in Table 9 by application and petition. The completion rates for Form I–914 are not identified here since this proposed rule

would exempt applicants from paying the fee for this form type, and the completion rates for Form I–290B/Motions (Administrative Appeals Office) and Biometric Services (Application Support Centers) are also not identified here since specific costs can be directly assigned to these fee-based services, and therefore the factors of workload volume and completion rates are not necessary to assign processing activity costs to products.

TABLE 9.—COMPLETION RATES

Form No.	Local offices	Service centers	National benefit center
I–90	.93	.50	N/A
I–102	.61	.30	.39
I–129	.09	.40	N/A
I–129F	4.98	.41	.37
I–130	.86	.35	.65
I–131	.54	.20	.14
I–140	2.00	.87	N/A
Waiver Applications	1.15	1.10	.85
I–360	.95	2.26	N/A
I–485	2.30	1.30	2.65
I–526	2.38	4.03	N/A
I–539	1.32	.28	.31
I–600/600A	1.53	N/A	N/A
I–687	2.37	2.89	.27
I–690	3.49	1.91	.23
I–694	4.00	.72	N/A
I–695	1.85	13.00	N/A
I–698	2.43	2.40	N/A
I–751	1.36	.46	N/A
I–765	.31	.19	.16
I–817	1.81	.46	.64
I–824	1.10	.39	.69
I–829	4.45	4.24	N/A
N–300	1.67	N/A	N/A
N–336	1.34	N/A	N/A
N–400	1.17	N/A	N/A
N–470	1.48	1.91	N/A
N–565	.58	.60	N/A
N–600/600K	.80	1.17	N/A

Table 10 displays the unit costs (processing activity costs divided by the number of fee-paying applications/petitions) for each immigration benefit application and petition by processing activity, and the average processing activity unit costs. The processing activity costs were identified in Table 8, and the number of fee-paying applications/petitions was identified as 4.742 million in Table 7.

The application and petition unit costs are generally increased by varying amounts according to the form type, mainly due to the ''Make Determination'' processing activity cost differences. As previously stated, the ''Make Determination'' processing activity unit cost generally follows the premise that the more complex the application/petition is to adjudicate, the higher the unit costs. For the processing activities of ''Inform the Public,'' ''Intake,'' ''Conduct IBIS Check,'' ''Review Records,'' ''Fraud Prevention and Detection'' and ''Issue Document,'' the applications and petitions reflect the same average unit costs for each processing activity. Since the ''Issue Document'' processing activity costs were allocated only to those applications for which a secure document is required, the average processing activity unit costs of $19 (based on total fee-paying volume of 4.742 million) is less than the processing activity unit costs of $41 (based on associated fee-paying volume of 2.193 million) for the associated applications.

TABLE 10.—PROCESSING ACTIVITY UNIT COSTS BY APPLICATION/PETITION

Form No.	Inform the public (dollars)	Intake (dollars)	Conduct IBIS check (dollars)	Review records (dollars)	Make determination (dollars)	Fraud prevention and detection (dollars)	Issue document (dollars)	Total unit processing activity cost (dollars)
I–90	48	18	10	45	34	19	41	215
I–102	48	18	10	45	104	19	0	244
I–129	48	18	10	45	104	19	0	244
I–129F	48	18	10	45	239	19	0	379
I–130	48	18	10	45	142	19	0	282
I–131	48	18	10	45	49	19	41	230
I–140	48	18	10	45	261	19	0	401
Waiver Applications	48	18	10	45	331	19	0	471
I–290B/Motions	48	18	10	45	371	19	0	511
I–360	48	18	10	45	2,268	19	0	2,408
I–485	48	18	10	45	647	19	41	828

TABLE 10.—PROCESSING ACTIVITY UNIT COSTS BY APPLICATION/PETITION—Continued

Form No.	Inform the public (dollars)	Intake (dollars)	Conduct IBIS check (dollars)	Review records (dollars)	Make determination (dollars)	Fraud prevention and detection (dollars)	Issue document (dollars)	Total unit processing activity cost (dollars)
I–526	48	18	10	45	1,212	19	0	1,352
I–539	48	18	10	45	84	19	0	224
I–600/600A	48	18	10	45	453	19	0	593
I–687	48	18	10	45	495	19	0	635
I–690	48	18	10	45	390	19	0	530
I–694	48	18	10	45	330	19	0	470
I–695	48	18	10	45	1,117	19	0	1,257
I–698	48	18	10	45	1,107	19	41	1,288
I–751	48	18	10	45	210	19	41	391
I–765	48	18	10	45	83	19	41	264
I–817	48	18	10	45	182	19	41	363
I–824	48	18	10	45	126	19	0	266
I–829	48	18	10	45	2,579	19	41	2,760
N–300	48	18	10	45	536	19	0	676
N–336	48	18	10	45	391	19	0	531
N–400	48	18	10	45	378	19	0	518
N–470	48	18	10	45	428	19	0	568
N–565	48	18	10	45	167	19	0	307
N–600/600K	48	18	10	45	245	19	0	385
Average Application/ Petition	48	18	10	45	223	19	19	382

VIII. Assigning Surcharge Costs to Applications and Petitions

The final step in calculating the immigration and naturalization benefit application and petition fees is to add amounts to recover asylum and refugee costs, and fee waiver and exempt costs. As previously mentioned, these costs are referred to as ''surcharges'' since they are not directly related to the processing activity costs of a particular immigration benefit. Surcharges are not assigned to the biometric fee.

A. Method of Assigning Costs

USCIS used the same average unit surcharge cost for every application and petition type. This is a departure from the current allocation methodology, since the current surcharges are based upon a flat percentage of each application/petition processing activity cost and therefore vary for each case type. USCIS decided that using the same average cost is a better allocation method, since the surcharges are unrelated to the complexity of the application/petition, and this new allocation method also minimizes the dollar impact on the more complex applications and petitions (which already will carry higher fees due to their complexity).

B. Fee Waiver/Exemption Costs

As previously stated, total fee waiver and exemption costs were determined to be $150 million. The average of $32 was derived by dividing the $150 million by the total 4.742 million application/petition fee-paying volumes.

C. Asylum/Refugee Costs

As previously stated, the full costs of asylum and refugee operations were determined to be $191 million. The average of $40 was derived by dividing the $191 million by the total 4.742 million application/petition fee-paying volume.

Table 11 displays the amount of surcharges applied to each application and petition on a per unit basis. Unit processing activity costs average (weighted) $382 or 86% of FY 2008/2009 IEFA costs, while unit fee waiver/exemption and Asylum/Refugee surcharges average $72 or 14%. This equates to a weighted average unit cost per application/petition of $454.

TABLE 11.—APPLICATION AND PETITION UNIT COSTS

Form No.	Unit processing activity cost	Unit fee waiver/exempt surcharge	Unit asylum/ refugee surcharge	Total unit cost
I–90	$215	$32	$40	$287
I–102	244	32	40	316
I–129	244	32	40	316
I–129F	379	32	40	451
I–130	282	32	40	354
I–131	230	32	40	302
I–140	401	32	40	473
Waiver Applications	471	32	40	543
I–290B/Motions	511	32	40	583
I–360	2,408	32	40	2,480
I–485	828	32	40	900
I–526	1,352	32	40	1,424
I–539	224	32	40	296
I–600/600A	593	32	40	665

TABLE 11.—APPLICATION AND PETITION UNIT COSTS—Continued

Form No.	Unit processing activity cost	Unit fee waiver/exempt surcharge	Unit asylum/refugee surcharge	Total unit cost
I–687	635	32	40	707
I–690	530	32	40	602
I–694	470	32	40	542
I–695	1,257	32	40	1,329
I–698	1,288	32	40	1,360
I–751	391	32	40	463
I–765	264	32	40	336
I–817	363	32	40	435
I–824	266	32	40	338
I–829	2,760	32	40	2,832
N–300	676	32	40	748
N–336	531	32	40	603
N–400	518	32	40	590
N–470	568	32	40	640
N–565	307	32	40	379
N–600/600K	385	32	40	457
Weighted Average Application/Petition	382	32	40	454

IX. Proposed Fee Adjustments

To arrive at the final proposed fees, the unit costs are rounded up or down to the nearest $5 increment consistent with past fee practices as reflected in 8 CFR 103.7(b).

A. Biometric Services

The biometric fee is increased by $10, from $70 to $80, or 14%. USCIS last increased the fee by $20, from $50 to $70, or 40% in April 2004. As discussed above, a portion of this fee is paid by USCIS to the FBI for fingerprint processing and that cost may change.

B. Immigration Benefit Applications and Petitions

The weighted average application/petition fee is increased by $223, from $231 to $454, or 96%. When combined with the biometric fee, the weighted average application/petition is increased from $264 to $491, or 86%. After consolidating the fees for adjustment of status (Form I–485) and interim benefits that previously required additional fees, the increase would only be 66%. When USCIS last performed a comprehensive fee review in FY 1998, the immigration benefit application/petition fees increased by a weighted average of $65 or 76%, from $85 to $150.

To arrive at the proposed fees, in addition to rounding adjustments, USCIS adjusted certain low volume form types. Since some low volume form types (20,000 or less) produced particularly high unit costs as compared to the current fees (greater than 250%), USCIS decided to increase them only by the average percentage fee increase (96%) of all immigration benefit applications and petitions. The additional costs from these form types were then prorated to other applications and petitions. These form types are:

- Form I–360, Petition for Amerasian Widow(er) or Special Immigrant (with respect to those Form I–360 applicants whose fee is not removed altogether);
- Form I–690, Application for Waiver of Excludability;
- Form I–695, Application for Replacement Employment Authorization or Temporary Residence Card;
- Form N–300, Application to File Declaration of Intention; and
- Form N–470, Application to Preserve Residence for Naturalization Purposes.

USCIS did, however, use its normal methodology to increase proposed fees for form types related to the legalization program under the Immigration Reform and Control Act of 1986, INA sec. 245A, 8 U.S.C. 1255a (Form I–694, Notice of Appeal of Decision; Form I–698, Application to Adjust Status From Temporary to Permanent Resident) and for Form I–829, Petition by Entrepreneur to Remove Conditions, although these increases were more than 250%. These applications, which relate to IRCA legalization applicants who have resided in the United States since at least 1982, or entrepreneurs seeking lawful permanent residence on the basis of investments of at least $500,000, did not appear to involve a substantial rationale for a lower fee than would otherwise be charged under the applicable methodology.

The proposed fee schedule for the immigration and naturalization benefit applications and petitions is illustrated in Table 12. The proposed rounded fee for each application or petition is compared to the current rounded fee, and the difference between the two is identified. This table omits some variations within specific form types relating to children, family caps, etc.; for these fees, please see the proposed regulation text itself.

TABLE 12.—CURRENT AND PROPOSED FEES

Form No.	Current fee (dollars)	Proposed fee (dollars)	Difference (dollars)
I–90	190	290	100
I–102	160	320	160
I–129	190	320	130
I–129F	170	455	285
I–130	190	355	165
I–131	170	305	135

TABLE 12.—CURRENT AND PROPOSED FEES—Continued

Form No.	Current fee (dollars)	Proposed fee (dollars)	Difference (dollars)
I–140	195	475	280
Waiver Applications	265	545	280
I–290B/Motions	385	585	200
I–360	190	375	185
I–485	325	905	580
I–526	480	1,435	955
I–539	200	300	100
I–600/600A	545	670	125
I–687	255	710	455
I–690	95	185	90
I–694	110	545	435
I–695	65	130	65
I–698	180	1,370	1,190
I–751	205	465	260
I–765	180	340	160
I–817	200	440	240
I–824	200	340	140
I–829	475	2,850	2,375
I–914	270	0	(270)
N–300	120	235	115
N–336	265	605	340
N–400	330	595	265
N–470	155	305	150
N–565	220	380	160
N–600/600K	255	460	205
Weighted Average Application/Petition	231	454	223

Based on the proposed fee schedule and a projected application/petition fee-paying volume of 4.742 million and biometric service volume of 2.196 million, immigration and naturalization benefit application and petition and biometric fees will generate $2.331 billion in annual revenue for the FY 2008 and FY 2009 biennial period. For the same period, the estimated FY 2008/2009 cost of processing immigration and naturalization benefit applications and petitions and biometric services is $2.329 billion. The $2 million difference is due to rounding.

X. Impact on Applicants and Petitioners

The USCIS recognizes that this proposed rule would have an impact on persons who file the affected applications and petitions and biometric fees. The proposed fee increases range from $65 to $2,350, depending on the type of immigration or naturalization benefit for which the application or petition is submitted. Fifteen fees will increase by amounts between $65 and $200; eight fees will increase, and one will decrease, by amounts between $200 and $300; one fee will increase by amounts between $300 and $400; and six fees will increase more than $400.

USCIS is retaining the authority to waive certain fees on a case-by-case basis pursuant to 8 CFR 103.7(c). In all fee waiver requests, applicants are required to demonstrate ''inability to pay.'' In determining ''inability to pay,'' USCIS officers will consider all factors, circumstances, and evidence supplied by the applicant including age, disability, household income, and qualification within the past 180 days for a federal means tested benefit. The current fees are based on a comprehensive fee review completed in FY 1998 that was based on projected FY 1998 costs and volumes, and processes that existed in FY 1996. The new fee review proposes to correctly align the fees with currently planned costs and processes. The methodology is similar to the FY 1998 Fee Review, yet improved in many areas given the more detailed and accurate data sources and improved management tools to align resources and workload (*e.g.*, staffing model). For these reasons, the proposed fees cannot be compared to the current fees because so many of the factors that influence the costs of processing immigration benefit application and petition fees have changed over this significant amount of time. However, besides the fact that overall costs have increased dramatically, the increases in fees can mainly be explained by comparing completion rate data (termed ''cycle time'' in the FY 1998 Fee Review).

As stated previously, the more time or ''level of effort'' spent on adjudicating a particular application or petition, measured in terms of completion rates, the higher the fee. Most of the increases in completion rates are associated with the additional time devoted to the expansion of background checks to all immigration benefit applications instituted in July 2002. Examples include:

- Form I–140, Immigrant Petition for Alien Worker, fee increase is due to the threefold increase in completion rates (*i.e.*, three times the level of effort) as compared with the FY 1998 Fee Review;
- Form I–129F, Petition for Alien Fiancé, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review;
- Waiver Applications, fee increases are due to the threefold increase in completion rates as compared with the FY 1998 Fee Review;
- Form I–485, Application to Register Permanent Status or Adjust Status, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review, as well as the manner in which interim benefits are added to this form type as explained in section VI (when comparing the fees applicants pay today for adjustment of status and interim benefits versus the proposed single fee for adjustment of

status, the difference is far less significant);

- Form N–400, Application for Naturalization, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review;
- Form I–751, Petition to Remove the Conditions on Residence, fee increase is due to the doubling in completion rates as compared with the FY 1998 Fee Review; and
- Form I–817, Application for Family Unity Benefits, fee increase is due to the threefold increase in completion rates as compared with the FY 1998 Fee Review.

Finally, even though the fee for Form I–290B/Motions was increased recently (September 28, 2005), the actual Fee Review supporting the increase was completed in November 2002. The data that were used for the current fee are outdated and costs have significantly increased. The November 2002 Fee Review was not a comprehensive analysis, as it did not analyze the full costs outside the Administrative Appeals Office that should be assigned to this form type, such as overhead, and other activities outside of the ''Make Determination'' activity such as ''Fraud Prevention and Detection,'' and ''Inform the Public'' activities. In addition, the November 2002 Fee Review did not include the allocation of fee waiver/exempt and asylum and refugee surcharges to the Form I–290B/Motions as this rulemaking does.

XI. Fee Waivers

In tandem with the proposed increase in fees, USCIS also proposes to modify and clarify eligibility for an individual fee waiver in 8 CFR 103.7(c). Where appropriate in its fee structure, USCIS waives the application/petition fee for a class of applicants/petitioners. For example, there is no fee for filing an application for asylum. The applicable rule, 8 CFR 103.7(c) provides for an individual fee waiver request in other cases. USCIS considers waiving the fee for a single individual based on his or her circumstances when all others in similar circumstances applying for the same benefit or service must pay the fee.

Every fee waiver, whether for a group of applicants done through the rate setting process or through an individual fee waiver, does not simply waive the fee for the affected individual or individuals. Since USCIS is funded from application fees, a fee waiver transfers the cost to all other fee-paying applicants. Fairness requires that there be compelling reasons when granting an individual fee waiver to one applicant while making others applying for the same benefit or service pay full cost plus a surcharge to pay for the free service provided to the first customer.

In recent months, the number of individual fee waiver requests has risen, both in terms of total volume and as a percentage of applications filed. In addition, the proposed rate setting is based on historical data with respect to fee waivers. The higher fees proposed in this rule would likely mean more customers will apply for fee waivers as they attempt to avoid the rising costs of applying for a benefit or service. The process of considering a fee waiver request itself has a significant associated adjudication cost.

To offset this potential, this proposed rule clarifies the fee waiver process by limiting fee waivers to certain situations. The current rule permits application for a fee waiver even when such an application contradicts the basic benefit or service being requested. For example, companies can apply for a waiver of the fee when seeking to admit a foreign worker to whom they must pay appropriate wages. Similarly, individuals may apply for a fee waiver when seeking status based on a substantial investment or an extension of stay where they must demonstrate the ability to support themselves during the period of extended stay without working. Applicants for permanent residence must demonstrate they can support themselves and will not become a public charge, and those seeking to sponsor the immigration of a relative must commit to providing a financial safety net to the relative if necessary to ensure the alien does not become a public charge, yet such applicants can seek a fee waiver.

These examples illustrate situations where the basic premise of a fee waiver is wholly or largely inconsistent with the status held or benefit or service sought. The proposed rule applies this principle by limiting the possibility of a fee waiver to certain kinds of applications where a need-based waiver is not inconsistent with the status or benefit being sought. In so doing, it also clarifies and simplifies the waiver process. The proposed rule limits the list of applications for which an individual fee waiver based on inability to pay may be granted to the Form I–90; Form I–751; Form I–765; Form I–817; Form N–300; Form N–336; Form N–400; Form N–470; Form N–565; Form N–600; Form N–600k; and the Form I–290B (if relating to a motion or appeal filed with USCIS regarding one of the other waiver-eligible form types).

Finally, a fee waiver based on an inability to pay implicates other provisions of the INA. INA section 212(a)(4), 8 U.S.C. 1182(a)(4), provides that an alien who is likely to become a public charge is inadmissible to the United States. In family-sponsored immigration, for example, this potential ground for inadmissibility may be overcome through the appropriate affidavit of support under INA section 213A, 8 U.S.C. 1183a. USCIS should not grant a waiver of a fee that indicates that the alien may be inadmissible and such affidavit of support may be suspect.

XII. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5. U.S.C. 601(6), USCIS examined the impact of this proposed rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act (15 U.S.C. 632)), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than 50,000 people). USCIS determined which entities were small by using the definitions supplied by the Small Business Administration. The size of the companies was determined by using the *ReferenceUSA* databases at *http://www.referenceusa.com/*. Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket.

Individuals rather than small entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that would be affected by this proposed rule are those that file and pay the fees for certain immigration benefit applications on behalf of an alien. These applications include the Form I–129, Petition for a Nonimmigrant Worker, and the Form I–140, Immigrant Petition for Alien Worker. USCIS conducted a statistically valid sample analysis of applicants of these form types to determine if this proposed rule has an economically significant impact on a substantial number of small entities.

Out of the 439,000 applications filed in FY 2005 for these form types, USCIS first identified the minimum sample size that was large enough to achieve a 95% confidence level. This sample size was identified as 383 (out of a total of 149,658 unique entities that filed applications in FY 2005). USCIS then randomly selected 653 entities, of which 561, or 86% were classified as small entities. Therefore, USCIS determined that a substantial number of small entities are impacted by this proposed rule.

USCIS then analyzed the economic impact on small entities of this proposed rule by (1) Identifying the number of applications filed by the small entities having sales revenue data identified by the random sample; and (2) multiplying the number of applications by the fee increase associated with the applicable form types in order to estimate the increased annual burden imposed by this rulemaking. Once USCIS determined the additional cost of this rulemaking on the randomly selected small entities, USCIS divided this total increased cost by the annual sales revenue of the entity. By comparing the cost increases imposed by this rulemaking with the sales revenue of the impacted small entities, we are able to understand the economic impact of this proposed rule on the individual small entities we have sampled. Using the *ReferenceUSA* database of business information, USCIS was able to identify annual sales revenue estimates for 273 of the 561 small entities previously sampled. Of the 273 small entities, 213 or about 78% of the small entities exhibited an impact of less than 0.1% of sales revenue, and all of the small entities sampled exhibited an impact of less than 1% of total revenue. A simple (non-weighted) average of the 273 small entities equated to an overall impact of only 0.06% of sales revenue. Therefore, USCIS believes that a substantial number of small entities are not significantly impacted economically by this proposed rule.

In summary, although the analysis shows that this rulemaking would affect a substantial number of small entities, the economic impact of this proposed rule was found to be negligible. This proposed rule has been reviewed in accordance with 5 U.S.C. 605(b), and the Department of Homeland Security certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any notice of proposed rulemaking ''that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year.'' 2 U.S.C. 1532(a). While this proposed rule, if finally promulgated, may result in the expenditure of more than $100 million by the private sector annually, the rulemaking is not a ''Federal mandate'' as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of application and petition fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States. 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than $100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866

This proposed rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. The implementation of this proposed rule would provide USCIS with an additional $1.081 billion in FY 2008 and FY 2009 in annual fee revenue, based on a projected annual fee-paying volume of 4.742 million applications/petitions and 2.196 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to subsections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants at no charge. If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit applications, USCIS would be forced to enact significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlog of immigration benefit applications and petitions to increase the integrity of the immigration benefit system and to protect national security and public safety. The revenue increase is based on USCIS costs and projected volumes that were available at the time the proposed rule was drafted. USCIS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget.

E. Executive Order 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rulemaking does not propose to impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

The changes to the fees will require changes to the application/petition form types to reflect the new fees. USCIS will submit a notification to OMB with respect to any such changes. In addition, this proposed rule anticipates (but is not dependent on) consolidating the Form I–131 and Form I–765 into the Form I–485 so that applicants for adjustment of status will not be required to file three separate form types in order to apply for adjustment of status, advance parole and employment authorization. This change will reduce paperwork burdens on these applicants.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Authority delegations (government agencies), Freedom of Information, Privacy, Reporting and

recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

2. Section 103.7 is amended by:

a. Removing the entry for the Form I–914 in paragraph (b)(1);

b. Revising the entries for the following forms in paragraph (b)(1);

c. Removing the fifth and sixth sentences in paragraph (c)(1); and by

d. Adding a new paragraph (c)(5).

The revision and addition read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

For capturing biometric information. A service fee of $80 will be charged for any individual who is required to have biometric information captured in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), and whose residence is in the United States.

* * * * *

Form I–90. For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—$290.

* * * * *

Form I–102. For filing a petition for an application (Form I–102) for Arrival/Departure Record (Form I–94) or Crewman's Landing (Form I–95), in lieu of one lost, mutilated, or destroyed—$320.

Form I–129. For filing a petition for a nonimmigrant worker—$320.

Form I–129F. For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act—$455; no fee for a K–3 spouse as designated in section 214.1(a)(2) of this chapter who is the beneficiary of an immigrant petition filed by a U.S. citizen on Form I–130.

Form I–130. For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act—$355.

Form I–131. For filing an application for travel documents—$305.

Form I–140. For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act—$475.

Form I–191. For filing an application for discretionary relief under section 212(c) of the Act—$545.

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—$545.

Form I–193. For filing an application for waiver of passport and/or visa—$545.

Form I–212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation—$545.

* * * * *

Form I–290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction—$585 (the fee will be the same when an appeal is taken from the denial of a petition with one or multiple beneficiaries, provided that they are all covered by the same petition, and therefore, the same decision).

Form I–360. For filing a petition for an Amerasian, Widow(er), or Special Immigrant—$375, except there is no fee for a petition seeking classification as an Amerasian or as a self-petitioning battered or abused spouse, parent, or child of a U.S. citizen or Lawful Permanent Resident.

Form I–485. For filing an application for permanent resident status or creation of a record of lawful permanent residence—$905 for an applicant 14 years of age or older; $805 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act. No additional fee will be charged for a request for travel document (advance parole) or employment authorization by an applicant who has paid the Form I–485 application fee, regardless whether or not the Form I–131 or Form I–765 is required to be filed by such applicant to receive these benefits.

* * * * *

Form I–526. For filing a petition for an alien entrepreneur—$1,435.

Form I–539. For filing an application to extend or change nonimmigrant status—$300.

* * * * *

Form I–600. For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$670.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$670.

Form I–601. For filing an application for waiver of ground of inadmissibility under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—$545.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$545.

Form I–687. For filing an application for status as a temporary resident under section 245A (a) of the Act. A fee of $710 for each application or $570 for each application for a minor child (under 18 years of age) is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children) shall be $1,990.

Form I–690. For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act—$185.

Form I–694. For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act—$545.

Form I–695. For filing an application for replacement of temporary resident card (Form I–688)—$130.

Form I–698. For filing an application for adjustment from temporary resident status to that of lawful permanent resident under section 245A(b)(1) of the Act. For applicants filing within 31 months from the date of adjustment to temporary resident status, a fee of $1,370 for each application is required at the time of filing with the Department of Homeland Security. The maximum amount payable by a family (husband, wife, and any minor children (under 18

years of age living at home)) shall be $4,110. For applicants filing after thirty-one months from the date of approval of temporary resident status, who file their applications on or after July 9, 1991, a fee of $1,410 (a maximum of $4,230 per family) is required. The adjustment date is the date of filing of the application for permanent residence or the applicant's eligibility date, whichever is later.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence, based on marriage—$465.

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$340.

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Form I–817. For filing an application for voluntary departure under the Family Unity Program—$440.

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Form I–824. For filing for action on an approved application or petition—$340.

Form I–829. For filing a petition by entrepreneur to remove conditions—$2,850.

* * * * *

Form N–300. For filing an application for declaration of intention—$235.

Form N–336. For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act—$605.

Form N–400. For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged)—$595.

* * * * *

Form N–470. For filing an application for benefits under section 316(b) or 317 of the Act—$305.

Form N–565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act—$380.

Form N–600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—$460, for applications filed on behalf of a biological child and $420 for applications filed on behalf of an adopted child.

Form N–600K. For filing an application for citizenship and issuance of certificate under section 322 of the Act—$460, for an application filed on behalf of a biological child and $420 for an application filed on behalf of an adopted child.

* * * * *

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws in any type of proceeding over which the Executive Office for Immigration Review does not have jurisdiction. No fee shall be charged for a motion to reopen or reconsider a decision on an application for relief for which no fee is chargeable or for any motion to reopen or reconsider made concurrently with any initial application for relief under the immigration laws for which no fee is chargeable. (The fee of $585 shall be charged whenever an appeal or motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision. When a motion to reopen or reconsider is made concurrently with any application for relief under the immigration laws for which a fee is chargeable, the motion is filed and, if the motion is granted, the requisite fee for filing the application for relief will be charged and must be paid within the time specified in order to complete the application.)—$585.

* * * * *

(c) * * *

(5) Except as otherwise specifically provided by this paragraph and by paragraphs (c)(2) and (c)(4) of this section, no fee relating to any application, petition, appeal, motion or request made to U.S. Citizenship and Immigration Services may be waived under this section except for the following: Form I–90; Form I–751; Form I–765; Form I–817; Form N–300; Form N–336; Form N–400; Form N–470; Form N–565; Form N–600; Form N–600K; and Form I–290B and motions filed with U.S. Citizenship and Immigration Services relating to the specified forms in this paragraph (c)(5).

* * * * *

Dated: January 26, 2007.

Michael Chertoff,

Secretary.

[FR Doc. E7–1631 Filed 1–31–07; 8:45 am]

BILLING CODE 4410–10–P

Federal Register

Thursday,
February 1, 2007

Part IV

Department of Housing and Urban Development

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2007; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5031–N–03]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2007

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: This notice announces revised Annual Adjustment Factors (AAFs) that are applied to Section 8 contract rents for specific programs. These factors are applied at Housing Assistance Payment (HAP) contract anniversaries for those calendar months commencing after the effective date of this notice. The AAFs are based on residential rent and utilities time-series cost indices from the Bureau of Labor Statistics Consumer Price Index (CPI) surveys.

DATES: *Effective Date:* February 1, 2007.

FOR FURTHER INFORMATION CONTACT: David Vargas, Senior Advisor, Housing Voucher Management and Operations Division, Office of Public Housing and Voucher Programs, (202) 708–0477 can respond to questions relating to the Section 8 Voucher, Certificate, and Moderate Rehabilitation programs; Mark Johnston, Office of Special Needs Assistance Programs, Office of Community Planning and Development, (202) 708–1234 for questions regarding the Single Room Occupancy Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, (202) 708–3000, for questions relating to all other Section 8 programs. Marie L. Lihn, Economic and Market Analysis Division, Office of Policy Development and Research (202) 708–0590, is the contact for technical information regarding the development of the factors for specific areas or the methods used for calculating the AAFs. Mailing address for above persons: Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Hearing- or speech-impaired persons may contact the Federal Information Relay Service at (800) 877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In addition to being published in the **Federal Register**, these data will be available electronically from the HUD data information page: *http://www.huduser.org/datasets/aaf.html*.

I. Methodology

AAFs are calculated using CPI data on rents and utilities for all metropolitan areas that are specifically surveyed for the CPI. AAFs for other areas use the more general CPI for rents and utilities calculated for the four Census Regions, Northeast, South, Midwest, and West. AAFs are rent change factors. Two types of AAFs are calculated. One type is a gross rent change factor that should be used when the primary utility (normally heating) is included in the rent. The other type is a shelter rent (i.e., rents without utilities) factor that should be used when the primary utility is not included in rent. Decennial census data are used to establish the relationship between gross rents and shelter rents.

CPI Surveys

For specific metropolitan areas where CPI surveys are conducted, changes in the shelter rent and utilities components are calculated based on the most recent CPI annual average change data. In this publication, the rent and utility CPIs for metropolitan areas are based on changes in the index from 2004 to 2005. The ''Highest Cost Utility Included'' column in Schedule C is calculated by weighting the rent and utility change factors using the corresponding components of gross rent in a particular area as calculated in the 2000 Census. The ''Highest Cost Utility Excluded'' column in Schedule C is calculated by eliminating the utility portion of the gross rent change factor.

For areas not covered by a specific metropolitan CPI surveys, HUD uses the CPI surveys for the Northeast, South, Midwest, or West region, as appropriate. Rent and utility change factors are calculated from 2004 to 2005. For areas assigned Census Region CPI factors, both metropolitan and non-metropolitan areas received the same factor.

Geographic Areas

The current and former metropolitan areas that use specific CPI factors are listed alphabetically in the tables, according to the metropolitan area where appropriate. Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

- For separate metropolitan areas, including counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions for those metropolitan and non-metropolitan areas that are not covered by the local CPI surveys.

The AAFs shown in Schedule C use the same Office of Management and Budget (OMB) metropolitan area definitions, as revised by HUD, that are used in the FY2007 Fair Market Rents.

Area Definitions in Schedule C

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the metropolitan or nonmetropolitan counties receive the regional CPI for that Census Region.

The AAF area definitions shown in Schedule C are listed in alphabetical order by state. The associated CPI division is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not specifically listed on Schedule C or the area file.

Puerto Rico and the Virgin Islands use the South Region AAFs. All areas in Hawaii use the AAFs identified in the Table as ''STATE: Hawaii,'' which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region AAFs.

II. Applying AAFs to Various Section 8 Programs

AAFs established by this notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs during the initial (i.e., pre-renewal) term of the HAP contract. Three categories of Section 8 programs use the AAFs:

Category 1—The Section 8 New Construction and Substantial Rehabilitation programs and the Section 8 Moderate Rehabilitation program.

Category 2—The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Category 3—The Section 8 Project-based Certificate (PBC) program.

Each Section 8 program category uses the AAFs differently. The specific HAP contract, program regulation, program requirement, or law determines the application of the AAFs. Restrictions to the use of AAF are discussed below:

Renewal Rents. AAFs are not used to determine renewal rents after expiration of the original Section 8 HAP contract (either for projects where the Section 8 HAP contract is renewed under a

restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are determined by applying a state-by-state operating cost adjustment factor (OCAF) published by HUD.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) or under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs, or by budget-based adjustments in accordance with 24 CFR 886.112 and 24 CFR 886.132. Budget-based adjustments are used for most Section 8/202 projects.

Certificate Program. In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in both the tenant-based and project-based certificate programs. The tenant-based certificate program has been terminated and all tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher Program, which does not use AAFs to adjust rents. All tenancies remaining in the project-based certificate program continue to use AAFs to adjust contract rent for outstanding HAP contracts.

Moderate Rehabilitation Program. Under the Section 8 Moderate Rehabilitation program (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent. For the other covered programs, the AAF is applied to the whole amount of the pre-adjustment contract rent.

III. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices, issued by the Office of Housing and the Office of Public and Indian Housing.

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the Section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the Section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is above the published FMR.

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (i.e., unless the contract rent is reduced by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time, rent adjustment by the AAF in the Category 2 programs is not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).). Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the Section 8 PBC program:

- The Table 2 AAF is always used. The Table 1 AAF is not used.
- The Table 2 AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.

IV. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

- For all tenancies assisted in the Section 8 Project-Based Certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type, and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding AAF in Table 2 will also be set at 1.0, as required by statute.

V. How To Find the AAF

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent, i.e., where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, i.e., where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.

• Determine whether the highest cost utility is or is not included in contract rent for the contract unit.

• If highest cost utility is included, select the AAF from the column for ''highest cost included.'' If highest cost utility is not included, select the AAF from the column for ''utility excluded.''

Accordingly, HUD publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments programs as set forth in the Tables.

Dated: January 25, 2007.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

BILLING CODE 4210–67–P

SCHEDULE C - TABLE 1 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Midwest Region	1.030	1.012
Northeast Region	1.051	1.026
South Region	1.040	1.028
West Region	1.035	1.025
Akron, OH MSA	1.031	1.001
Anchorage, AK MSA Metropolitan Area Components: Anchorage, AK HMFA Matanuska-Susitna Borough, AK HMFA	1.023	1.010
Ann Arbor, MI MSA	1.023	1.007
Ashtabula County, OH	1.039	1.000
Atlanta-Sandy Springs-Marietta, GA MSA Metropolitan Area Components: Atlanta-Sandy Springs-Marietta, GA HMFA Butts County, GA HMFA Haralson County, GA HMFA Lamar County, GA HMFA Meriwether County, GA HMFA	1.021	1.000
Atlantic City, NJ MSA	1.042	1.036
Baltimore-Towson, MD MSA Metropolitan Area Components: Baltimore-Towson, MD HMFA Columbia city, MD HMFA	1.051	1.042
Boston-Cambridge-Quincy, MA-NH MSA Metropolitan Area Components: Boston-Cambridge-Quincy, MA-NH HMFA Brockton, MA HMFA Lawrence, MA-NH HMFA Lowell, MA HMFA Portsmouth-Rochester, NH HMFA Western Rockingham County, NH HMFA	1.032	1.006
Boulder, CO MSA	1.021	1.008
Bremerton-Silverdale, WA MSA	1.020	1.011

SCHEDULE C - TABLE 1 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Bridgeport-Stamford-Norwalk, CT MSA	1.060	1.042
Metropolitan Area Components:		
Bridgeport, CT HMFA		
Danbury, CT HMFA		
Stamford-Norwalk, CT HMFA		
Chicago-Naperville-Joliet, IL-IN-WI MSA	1.038	1.023
Metropolitan Area Components:		
Chicago-Naperville-Joliet, IL HMFA		
DeKalb County, IL HMFA		
Gary, IN HMFA		
Grundy County, IL HMFA		
Jasper County, IN HMFA		
Kendall County, IL HMFA		
Kenosha County, WI HMFA		
Cincinnati-Middletown, OH-KY-IN MSA	1.020	1.008
Metropolitan Area Components:		
Brown County, OH HMFA		
Cincinnati-Middleton, OH-KY-IN HMFA		
Grant County, KY HMFA		
Cleveland-Elyria-Mentor, OH MSA	1.029	1.001
Culpeper County, VA	1.052	1.042
Dallas-Fort Worth-Arlington, TX MSA	1.027	1.000
Metropolitan Area Components:		
Dallas, TX HMFA		
Fort Worth-Arlington, TX HMFA		
Wise County, TX HMFA		
Denver-Aurora, CO MSA	1.023	1.007
Detroit-Warren-Livonia, MI MSA	1.030	1.005
Metropolitan Area Components:		
Detroit-Warren-Livonia, MI HMFA		
Livingston County, MI HMFA		
Flint, MI MSA	1.036	1.002
Greeley, CO MSA	1.030	1.006
HAWAII	1.061	1.054
Hagerstown-Martinsburg, MD-WV MSA	1.053	1.042
Metropolitan Area Components:		
Hagerstown, MD HMFA		
Martinsburg, WV HMFA		

SCHEDULE C - TABLE 1 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Henderson County, TX	1.046	1.000
Hood County, TX	1.043	1.000
Houston-Sugar Land-Baytown, TX MSA Metropolitan Area Components: Austin County, TX HMFA Brazoria County, TX HMFA Houston-Baytown-Sugar Land, TX HMFA	1.034	1.008
Island County, WA	1.021	1.011
Kankakee-Bradley, IL MSA	1.041	1.021
Kansas City, MO-KS MSA Metropolitan Area Components: Bates County, MO HMFA Franklin County, KS HMFA Kansas City, MO-KS HMFA	1.016	1.001
King George County, VA	1.052	1.042
Lenawee County, MI	1.033	1.004
Los Angeles-Long Beach-Santa Ana, CA MSA Metropolitan Area Components: Los Angeles-Long Beach, CA HMFA Orange County, CA HMFA	1.067	1.064
Manchester-Nashua, NH MSA Metropolitan Area Components: Hillsborough County, NH (part) HMFA Manchester, NH HMFA Nashua, NH HMFA	1.036	1.003
Miami-Fort Lauderdale-Miami Beach, FL MSA Metropolitan Area Components: Fort Lauderdale, FL HMFA Miami-Miami Beach-Kendall, FL HMFA West Palm Beach-Boca Raton, FL HMFA	1.061	1.063
Milwaukee-Waukesha-West Allis, WI MSA	1.028	1.012
Minneapolis-St. Paul-Bloomington, MN-WI MSA	1.004	1.000
Monroe, MI MSA	1.031	1.004
Napa, CA MSA	1.013	1.002

SCHEDULE C - TABLE 1 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
New Haven-Milford, CT MSA Metropolitan Area Components: Milford-Ansonia-Seymour, CT HMFA New Haven-Meriden, CT HMFA Waterbury, CT HMFA	1.062	1.040
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA Metropolitan Area Components: Bergen-Passaic, NJ HMFA Jersey City, NJ HMFA Middlesex-Somerset-Hunterdon, NJ HMFA Monmouth-Ocean, NJ HMFA Nassau-Suffolk, NY HMFA New York, NY HMFA Newark, NJ HMFA Pike County, PA HMFA	1.059	1.044
Ocean City, NJ MSA	1.043	1.036
Olympia, WA MSA	1.019	1.011
Oxnard-Thousand Oaks-Ventura, CA MSA	1.067	1.064
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	1.042	1.036
Phoenix-Mesa-Scottsdale, AZ MSA	1.016	1.001
Pittsburgh, PA MSA Metropolitan Area Components: Armstrong County, PA HMFA Pittsburgh, PA HMFA	1.040	1.014
Portland-Vancouver-Beaverton, OR-WA MSA	1.019	1.013
Poughkeepsie-Newburgh-Middletown, NY MSA	1.062	1.041
Racine, WI MSA	1.030	1.012
Riverside-San Bernardino-Ontario, CA MSA	1.069	1.064
Salem, OR MSA	1.020	1.013
San Diego-Carlsbad-San Marcos, CA MSA	1.041	1.037
San Francisco-Oakland-Fremont, CA MSA Metropolitan Area Components: Oakland-Fremont, CA HMFA San Francisco, CA HMFA	1.010	1.002

SCHEDULE C - TABLE 1 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
San Jose-Sunnyvale-Santa Clara, CA MSA	1.009	1.003
Metropolitan Area Components:		
San Benito County, CA HMFA		
San Jose-Sunnyvale-Santa Clara, CA HMFA		
Santa Cruz-Watsonville, CA MSA	1.012	1.002
Santa Rosa-Petaluma, CA MSA	1.012	1.002
Seattle-Tacoma-Bellevue, WA MSA	1.017	1.011
Metropolitan Area Components:		
Seattle-Bellevue, WA HMFA		
Tacoma, WA HMFA		
St. Louis, MO-IL MSA	1.025	1.014
Metropolitan Area Components:		
Bond County, IL HMFA		
Macoupin County, IL HMFA		
St. Louis, MO-IL HMFA		
Washington County, MO HMFA		
Tampa-St. Petersburg-Clearwater, FL MSA	1.041	1.037
Trenton-Ewing, NJ MSA	1.061	1.042
Vallejo-Fairfield, CA MSA	1.014	1.002
Vineland-Millville-Bridgeton, NJ MSA	1.043	1.036
Washington-Arlington-Alexandria, DC-VA-MD-WV MSA	1.050	1.043
Metropolitan Area Components:		
Jefferson County, WV HMFA		
Warren County, VA HMFA		
Washington-Arlington-Alexandria, DC-VA-MD HMFA		
Westchester County, NY Statutory Exception Area	1.060	1.043
Worcester, MA MSA	1.038	1.003
Metropolitan Area Components:		
Eastern Worcester County, MA HMFA		
Fitchburg-Leominster, MA HMFA		
Western Worcester County, MA HMFA		
Worcester, MA HMFA		

SCHEDULE C - TABLE 2 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Midwest Region	1.020	1.002
Northeast Region	1.041	1.016
South Region	1.030	1.018
West Region	1.025	1.015
Akron, OH MSA	1.021	1.000
Anchorage, AK MSA Metropolitan Area Components: Anchorage, AK HMFA Matanuska-Susitna Borough, AK HMFA	1.013	1.000
Ann Arbor, MI MSA	1.013	1.000
Ashtabula County, OH	1.029	1.000
Atlanta-Sandy Springs-Marietta, GA MSA Metropolitan Area Components: Atlanta-Sandy Springs-Marietta, GA HMFA Butts County, GA HMFA Haralson County, GA HMFA Lamar County, GA HMFA Meriwether County, GA HMFA	1.011	1.000
Atlantic City, NJ MSA	1.032	1.026
Baltimore-Towson, MD MSA Metropolitan Area Components: Baltimore-Towson, MD HMFA Columbia city, MD HMFA	1.041	1.032
Boston-Cambridge-Quincy, MA-NH MSA Metropolitan Area Components: Boston-Cambridge-Quincy, MA-NH HMFA Brockton, MA HMFA Lawrence, MA-NH HMFA Lowell, MA HMFA Portsmouth-Rochester, NH HMFA Western Rockingham County, NH HMFA	1.022	1.000
Boulder, CO MSA	1.011	1.000
Bremerton-Silverdale, WA MSA	1.010	1.001

SCHEDULE C - TABLE 2 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Bridgeport-Stamford-Norwalk, CT MSA Metropolitan Area Components: Bridgeport, CT HMFA Danbury, CT HMFA Stamford-Norwalk, CT HMFA	1.050	1.032
Chicago-Naperville-Joliet, IL-IN-WI MSA Metropolitan Area Components: Chicago-Naperville-Joliet, IL HMFA DeKalb County, IL HMFA Gary, IN HMFA Grundy County, IL HMFA Jasper County, IN HMFA Kendall County, IL HMFA Kenosha County, WI HMFA	1.028	1.013
Cincinnati-Middletown, OH-KY-IN MSA Metropolitan Area Components: Brown County, OH HMFA Cincinnati-Middleton, OH-KY-IN HMFA Grant County, KY HMFA	1.010	1.000
Cleveland-Elyria-Mentor, OH MSA	1.019	1.000
Culpeper County, VA	1.042	1.032
Dallas-Fort Worth-Arlington, TX MSA Metropolitan Area Components: Dallas, TX HMFA Fort Worth-Arlington, TX HMFA Wise County, TX HMFA	1.017	1.000
Denver-Aurora, CO MSA	1.013	1.000
Detroit-Warren-Livonia, MI MSA Metropolitan Area Components: Detroit-Warren-Livonia, MI HMFA Livingston County, MI HMFA	1.020	1.000
Flint, MI MSA	1.026	1.000
Greeley, CO MSA	1.020	1.000
HAWAII	1.051	1.044
Hagerstown-Martinsburg, MD-WV MSA Metropolitan Area Components: Hagerstown, MD HMFA Martinsburg, WV HMFA	1.043	1.032

SCHEDULE C - TABLE 2 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
Henderson County, TX	1.036	1.000
Hood County, TX	1.033	1.000
Houston-Sugar Land-Baytown, TX MSA Metropolitan Area Components: Austin County, TX HMFA Brazoria County, TX HMFA Houston-Baytown-Sugar Land, TX HMFA	1.024	1.000
Island County, WA	1.011	1.001
Kankakee-Bradley, IL MSA	1.031	1.011
Kansas City, MO-KS MSA Metropolitan Area Components: Bates County, MO HMFA Franklin County, KS HMFA Kansas City, MO-KS HMFA	1.006	1.000
King George County, VA	1.042	1.032
Lenawee County, MI	1.023	1.000
Los Angeles-Long Beach-Santa Ana, CA MSA Metropolitan Area Components: Los Angeles-Long Beach, CA HMFA Orange County, CA HMFA	1.057	1.054
Manchester-Nashua, NH MSA Metropolitan Area Components: Hillsborough County, NH (part) HMFA Manchester, NH HMFA Nashua, NH HMFA	1.026	1.000
Miami-Fort Lauderdale-Miami Beach, FL MSA Metropolitan Area Components: Fort Lauderdale, FL HMFA Miami-Miami Beach-Kendall, FL HMFA West Palm Beach-Boca Raton, FL HMFA	1.051	1.053
Milwaukee-Waukesha-West Allis, WI MSA	1.018	1.002
Minneapolis-St. Paul-Bloomington, MN-WI MSA	1.000	1.000
Monroe, MI MSA	1.021	1.000
Napa, CA MSA	1.003	1.000

SCHEDULE C - TABLE 2 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
New Haven-Milford, CT MSA	1.052	1.030
Metropolitan Area Components:		
Milford-Ansonia-Seymour, CT HMFA		
New Haven-Meriden, CT HMFA		
Waterbury, CT HMFA		
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA	1.049	1.034
Metropolitan Area Components:		
Bergen-Passaic, NJ HMFA		
Jersey City, NJ HMFA		
Middlesex-Somerset-Hunterdon, NJ HMFA		
Monmouth-Ocean, NJ HMFA		
Nassau-Suffolk, NY HMFA		
New York, NY HMFA		
Newark, NJ HMFA		
Pike County, PA HMFA		
Ocean City, NJ MSA	1.033	1.026
Olympia, WA MSA	1.009	1.001
Oxnard-Thousand Oaks-Ventura, CA MSA	1.057	1.054
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	1.032	1.026
Phoenix-Mesa-Scottsdale, AZ MSA	1.006	1.000
Pittsburgh, PA MSA	1.030	1.004
Metropolitan Area Components:		
Armstrong County, PA HMFA		
Pittsburgh, PA HMFA		
Portland-Vancouver-Beaverton, OR-WA MSA	1.009	1.003
Poughkeepsie-Newburgh-Middletown, NY MSA	1.052	1.031
Racine, WI MSA	1.020	1.002
Riverside-San Bernardino-Ontario, CA MSA	1.059	1.054
Salem, OR MSA	1.010	1.003
San Diego-Carlsbad-San Marcos, CA MSA	1.031	1.027
San Francisco-Oakland-Fremont, CA MSA	1.000	1.000
Metropolitan Area Components:		
Oakland-Fremont, CA HMFA		
San Francisco, CA HMFA		

SCHEDULE C - TABLE 2 - 2007 CONTRACT RENT AAFS 01/30/07

	HIGHEST COST UTILITY INCLUDED	EXCLUDED
San Jose-Sunnyvale-Santa Clara, CA MSA	1.000	1.000
Metropolitan Area Components:		
San Benito County, CA HMFA		
San Jose-Sunnyvale-Santa Clara, CA HMFA		
Santa Cruz-Watsonville, CA MSA	1.002	1.000
Santa Rosa-Petaluma, CA MSA	1.002	1.000
Seattle-Tacoma-Bellevue, WA MSA	1.007	1.001
Metropolitan Area Components:		
Seattle-Bellevue, WA HMFA		
Tacoma, WA HMFA		
St. Louis, MO-IL MSA	1.015	1.004
Metropolitan Area Components:		
Bond County, IL HMFA		
Macoupin County, IL HMFA		
St. Louis, MO-IL HMFA		
Washington County, MO HMFA		
Tampa-St. Petersburg-Clearwater, FL MSA	1.031	1.027
Trenton-Ewing, NJ MSA	1.051	1.032
Vallejo-Fairfield, CA MSA	1.004	1.000
Vineland-Millville-Bridgeton, NJ MSA	1.033	1.026
Washington-Arlington-Alexandria, DC-VA-MD-WV MSA	1.040	1.033
Metropolitan Area Components:		
Jefferson County, WV HMFA		
Warren County, VA HMFA		
Washington-Arlington-Alexandria, DC-VA-MD HMFA		
Westchester County, NY Statutory Exception Area	1.050	1.033
Worcester, MA MSA	1.028	1.000
Metropolitan Area Components:		
Eastern Worcester County, MA HMFA		
Fitchburg-Leominster, MA HMFA		
Western Worcester County, MA HMFA		
Worcester, MA HMFA		

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

ALABAMA (SOUTH)

All Counties in Alabama use the South Region AAF

ALASKA (WEST)

CPI AREAS:	COUNTIES
Anchorage, AK MSA	
Metropolitan Area Components:	
Anchorage, AK HMFA	Anchorage
Matanuska-Susitna Borough, AK HMFA	Matanuska-Susitna

All other Counties use the West Region AAF

ARIZONA (WEST)

CPI AREAS:	COUNTIES
Phoenix-Mesa-Scottsdale, AZ MSA	Maricopa, Pinal

All other Counties use the West Region AAF

ARKANSAS (SOUTH)

All Counties in Arkansas use the South Region AAF

CALIFORNIA (WEST)

CPI AREAS:	COUNTIES
Los Angeles-Long Beach-Santa Ana, CA MSA	
Metropolitan Area Components:	
Los Angeles-Long Beach, CA HMFA	Los Angeles
Orange County, CA HMFA:	Orange
Napa, CA MSA	Napa
Oxnard-Thousand Oaks-Ventura, CA MSA	Ventura
Riverside-San Bernardino, CA MSA:	Riverside, San Bernardino
San Diego-Carlsbad-San Marcos, CA MSA:	San Diego
San Francisco-Oakland-Fremont, CA MSA	
Metropolitan Area Components:	
Oakland-Fremont, CA HMFA	Alameda, Contra Costa
San Francisco, CA HMFA	Marin, San Francisco, San Mateo
San Jose-Sunnyvale-Santa Clara, CA MSA	
Metropolitan Area Components:	
San Benito County, CA HMFA	San Benito
San Jose-Sunnydale-Santa Clara, CA HMFA	Santa Clara
Santa Cruz-Watsonville, CA MSA:	Santa Cruz
Santa Rosa-Petaluma, CA MSA:	Sonoma
Vallejo-Fairfield, CA MSA:	Solano

All other Counties in California use the West Region AAF

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

COLORADO (WEST)

CPI AREAS:	COUNTIES
Boulder, CO MSA:	Boulder
Denver-Aurora, CO MSA:	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park.
Greeley, CO MSA:	Weld

All other Counties in Colorado use the West Region AAF

CONNECTICUT (NORTHEAST)

CPI AREAS:	COUNTIES/TOWNS
Bridgeport-Stamford-Norwalk, CT MSA	
Metropolitan Area Components:	
Bridgeport, CT HMFA	Fairfield County towns of Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull
Danbury, CT HMFA	Fairfield County towns of Bethel, Brookfield, Danbury, New Fairfield, Newtown, Redding, Ridgefield, Sherman.
Stamford-Norwalk, CT HMFA	Fairfield County towns of Darien, Greenwich, New Canaan, Norwalk, Stamford, Weston, Westport, Wilton
New Haven-Milford, CT MSA	
Metropolitan Area Components:	
Milford-Ansonia-Seymour, CT HMFA	New Haven County towns of Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour
New Haven-Meriden, CT HMFA	New Haven County towns of Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven, Woodbridge
Waterbury, CT HMFA	New Haven County towns of Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott

All other Counties/Towns in Connecticut use the Northeast Region AAF

DELAWARE (SOUTH)

CPI AREAS:	COUNTIES
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA:	New Castle

All other Counties in Delaware use the South Region AAF

DIST. OF COLUMBIA (SOUTH)

CPI AREAS:	COUNTIES
Washington-Arlington-Alexandria, DC-VA-MD HMFA :	District of Columbia

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

FLORIDA (SOUTH)

CPI AREAS:	COUNTIES
Miami-Fort Lauderdale-Miami Beach, FL MSA:	Broward, Miami-Dade, Palm Beach
Tampa-St. Petersburg-Clearwater, FL MSA:	Hernando, Hillsborough, Pasco, Pinellas

All other Counties in Florida use the South Region AAF

GEORGIA (SOUTH)

CPI AREAS:	COUNTIES
Atlanta-Sandy Springs-Marietta, GA MSA	
Metropolitan Area Components:	
Atlanta-Sandy Springs-Marietta, GA HMFA:	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, De Kalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton
Butts County, GA HMFA	Butts
Haralson County, GA HMFA	Haralson
Lamar County, GA HMFA	Lamar
Meriwether County, GA HMFA	Meriwether

All other Counties in Georgia use the South Region AAF

HAWAII (WEST)

CPI AREAS:	COUNTIES
STATE Hawaii:	Hawaii, Honolulu, Kalawao, Kauai, Maui

IDAHO (WEST)

All Counties in Idaho use the West Region AAF

ILLINOIS (MIDWEST)

CPI AREAS:	COUNTIES
Chicago-Naperville-Joliet, IL-IN-WI MSA	
Metropolitan Area Components:	
Chicago-Naperville-Joliet, IL HMFA:	Cook, Dupage, Kane, Kendall, Lake, McHenry, Will
De Kalb County, IL HMFA:	De Kalb
Grundy County, IL:	Grundy
Kankakee-Bradley, IL MSA:	Kankakee
St. Louis, MO-IL MSA	
Metropolitan Area Components:	
Bond County, IL HMFA:	Bond
Macoupin County, IL HMFA:	Macoupin
St. Louis, MO-IL HMFA:	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair

All other Counties in Illinois use the Midwest Region AAF

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

INDIANA (MIDWEST)

CPI AREAS:	COUNTIES
Chicago-Naperville-Joliet, IL-IN-WI MSA	
Metropolitan Area Components:	
Gary, IN HMFA:	Lake, Newton, Porter
Jasper County, IN HMFA	Jasper
Cincinnati-Middleton, OH-KY-IN HMFA:	Dearborn, Franklin, Ohio.

All other Counties in Indiana use the Midwest Region AAF

IOWA (MIDWEST)

All Counties in Iowa use the Midwest Region AAF

KANSAS (MIDWEST)

CPI AREAS:	COUNTIES
Kansas City, MO-KS MSA	
Metropolitan Area Components:	
Franklin County, KS HMFA	Franklin
Kansas City, MO-KS HMFA:	Johnson, Leavenworth, Linn, Miami, Wyandotte

All other Counties in Kansas use the Midwest Region AAF

KENTUCKY (SOUTH)

CPI AREAS:	COUNTIES
Cincinnati-Middleton, OH-KY-IN MSA	
Metropolitan Area Components:	
Cincinnati-Middleton OH-KY-IN HMFA:	Boone, Bracken, Campbell, Gallatin , Kenton, Pendleton
Grant County, KY HMFA:	Grant

All other Counties in Kentucky use the South Region AAF

LOUISIANA (SOUTH)

All Parishes in Louisiana use the South Region AAF

MAINE (NORTHEAST)

All Counties in Maine use the Northeast Region AAF

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MARYLAND (SOUTH)

CPI AREAS:	COUNTIES
Baltimore-Towson, MD MSA	
Metropolitan Area Components:	
Baltimore-Towson, MD HMFA:	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore city,
Columbia city, MD MSA	
Hagerstown-Martinsburg, MD-WV MSA:	Washington
Washington-Arlington-Alexandria, DC-VA-MD HMFA:	Calvert, Charles, Frederick, Montgomery, Prince George's
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	Cecil

All other Counties in Maryland use the South AAF

MASSACHUSETTS (NORTHEAST)

CPI AREAS:	COUNTIES
Boston-Cambridge-Quincy, MA-NH MSA	
Metropolitan Area Components:	
Boston-Cambridge-Quincy, MA-NH HMFA:	**Essex County towns** of Amesbury, Beverly, Danvers, Essex, Gloucester, Hamilton, Ipswich, Lynn, Lynnfield, Manchester-by-the-Sea, Marblehead, Middleton, Nahant, Newbury, Newburyport, Peabody, Rockport, Rowley, Salem city, Salisbury, Saugus, Swampscott, Topsfield, Wenham.
	Middlesex County towns of Acton, Arlington, Ashby, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge, Carlisle, Concord, Everett, Framingham, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden, Marlborough, Maynard, Medford, Melrose, Natick, Newton, North Reading, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury, Townsend, Wakefield, Waltham, Watertown, Wayland, Weston, Wilmington, Winchester, Woburn.
	Norfolk County towns of Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Plainville, Quincy, Randolph town, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham.
	Plymouth County towns of Carver, Duxbury, Hanover, Hingham, Hull, Kingston, Marshfield, Norwell, Pembroke, Plymouth, Rockland, Scituate, Wareham.
	Suffolk county towns of Boston, Chelsea, Revere, Winthrop.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MASSACHUSETTS (Cont.)

CPI AREAS:	COUNTIES
Boston-Cambridge-Quincy, MA-NH MSA	
Metropolitan Area Components:	
Brockton, MA HMFA:	**Norfolk County town** of Avon. **Plymouth County towns** of Abington, Bridgewater, Brockton, East Bridgewater, Halifax, Hanson, Lakeville, Marion, Mattapoisett, Middleborough, Plympton, Rochester, West Bridgewater town, Whitman.
Lawrence, MA-NH HMFA	**Essex County towns** of Andover, Boxford, Georgetown, Groveland, Haverhill, Lawrence, Merrimac, Methuen, North Andover, West Newbury.
Lowell, MA HMFA	**Middlesex County town** of Billerica, Chelmsford, Dracut, Dunstable, Groton, Lowell, Pepperell, Tewksbury, Tyngsborough, Westford.
Worcester, MA MSA	
Metropolitan Area Components:	
Eastern Worcester County, MA HMFA:	**Worcester County towns** of Berlin, Blackstone, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Millville, Southborough, Upton.
Fitchburg-Leominster, MA HMFA:	**Worcester County towns** of Ashburnham, Fitchburg, Gardner, Leominster, Lunenburg, Templeton, Westminster, Winchendon.
Western Worcester County, MA HMFA:	**Worcester County towns** of Athol, Hardwick, Hubbardston, New Braintree, Petersham, Phillipston, Royalston, Warren.
Worcester, MA HMFA:	**Worcester County towns** of Auburn, Barre, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton, Holden, Leicester, Millbury, Northborough, Northbridge, North Brookfield, Oakham, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Southbridge, Spencer, Sterling, Sturbridge, Sutton, Uxbridge, Webster, Westborough, West Boylston, West Brookfield, Worcester.

All other Counties/Towns in Massachusetts use the Northeast Region AAF

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

MICHIGAN (MIDWEST)

CPI AREAS:	COUNTIES
Ann Arbor, MI MSA:	Washtenaw
Detroit-Warren-Livonia, MI MSA	
Metropolitan Area Components:	
Detroit-Warren-Livonia, MI HMFA:	Lapeer, Macomb, Oakland, St. Clair, Wayne
Livingston County, MI HMFA:	Livingston
Flint, MI MSA:	Genesee
Lenawee County, MI:	Lenawee
Monroe, MI MSA:	Monroe

All other Counties in Michigan use the Midwest Region AAF

MINNESOTA (MIDWEST)

CPI AREAS:	COUNTIES
Minneapolis-St. Paul-Bloomington, MN-WI MSA:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright

All other Counties in Minnesota use the Midwest Region AAF

MISSISSIPPI (SOUTH)

All Counties in Mississippi use the South Region AAF

MISSOURI (MIDWEST)

CPI AREAS:	COUNTIES
Kansas City, MO-KS MSA	
Metropolitan Area Components:	
Bates County, MO HMFA	Bates
Kansas City, MO-KS HMFA:	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Louis, MO-IL MSA	
Metropolitan Area Components:	
St. Louis, MO-IL HMFA:	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city
Washington County, MO HMFA:	Washington

All other Counties in Missouri (including the rest of Crawford County) use the Midwest Region AAF.

MONTANA (WEST)

All Counties in Montana use the West Region AAF

NEBRASKA (MIDWEST)

All Counties in Nebraska use the Midwest Region AAF.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEVADA (WEST)

All Counties in Nevada use Midwest Region AAF.

NEW HAMPSHIRE (NORTHEAST)

CPI AREAS:	COUNTIES
Boston-Cambridge-Quincy, MA-NH MSA	
Metropolitan Area Components:	
Boston-Cambridge-Quincy, MA-NH HMFA:	**Rockingham County towns** of Seabrook, South Hampton
Lawrence, MA-NH HMFA:	**Rockingham County towns** of Atkinson, Chester, Danville, Derry, Fremont, Hampstead, Kingston, Newton, Plaistow, Raymond, Salem, Sandown, Windham
Portsmouth-Rochester, NH HMFA:	**Rockingham County towns** of Brentwood, East Kingston, Epping, Exeter, Greenland, Hampton, Hampton Falls, Kensington, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham
	Strafford County towns of Barrington, Dover, Durham, Farmington, Lee, Madbury, Middleton, Milton, New Durham, Rochester, Rollinsford, Somersworth, Strafford
Western Rockingham County, NH HMFA:	**Rockingham County towns** of Auburn, Candia, Deerfield, Londonderry, Northwood, Nottingham
Manchester-Nashua, NH MSA	
Metropolitan Area Components:	
Hillsborough County, NH (part) HMFA:	**Hillsborough County towns** of Antrim, Bennington, Deering, Francestown, Greenfield, Hancock, Hillsborough, Lyndeborough, New Boston, Peterborough, Sharon, Temple, Windsor.
Manchester, NH HMFA:	**Hillsborough County towns** of Bedford, Goffstown, Manchester, Weare.
Nashua, NH HMFA:	**Hillsborough County towns** of Amherst, Brookline, Greenville, Hollis, Hudson, Litchfield, Mason, Merrimack, Milford, Mont Vernon, Nashua, New Ipswich, Pelham, Wilton

All other Counties/Towns in New Hampshire use Northeast Region AAF.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

NEW JERSEY (NORTHEAST)

CPI AREAS:	COUNTIES
Atlantic City, NJ:	Atlantic
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA	
Metropolitan Area Components:	
Bergen-Passaic, NJ HMFA:	Bergen, Passaic
Jersey City, NJ HMFA:	Hudson
Middlesex-Somerset-Hunterdon, NJ HMFA:	Hunterdon, Middlesex, Somerset
New York-Monmouth-Ocean, NY-NJ HMFA:	Monmouth, Ocean
Newark, NJ HMFA:	Essex, Morris, Sussex, Union
Ocean City, NJ MSA:	Cape May
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	Burlington, Camden, Gloucester, Salem
Trenton-Ewing, NJ MSA:	Mercer
Vineland-Millville-Bridgeton, NJ MSA:	Cumberland

Warren County uses the Northeast Region AAF.

NEW MEXICO (WEST)

All Counties in New Mexico use the West Region AAF.

NEW YORK (NORTHEAST)

CPI AREAS:	COUNTIES
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA	
Metropolitan Area Components:	
Nassau-Suffolk, NY HMFA:	Nassau, Suffolk
New York-Monmouth-Ocean, NY-NJ HMFA:	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland
Poughkeepsie-Newburgh-Middletown, NY MSA:	Dutchess, Orange
Westchester County, NY HMFA:	Westchester

All other Counties in New York use the Northeast Region AAF.

NORTH CAROLINA (SOUTH)

All Counties in North Carolina use the South Region AAF.

NORTH DAKOTA (MIDWEST)

All Counties in North Dakota use the Midwest Region AAF.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

OHIO (MIDWEST)

CPI AREAS:	COUNTIES
Akron, OH MSA:	Portage, Summit
Ashtabula County, OH:	Ashtabula
Cincinnati-Middleton, OH-KY-IN MSA	
Metropolitan Area Components:	
Brown County, OH HMFA:	Brown
Cincinnati-Middleton OH-KY-IN HMFA:	Butler, Clermont, Hamilton, Warren
Cleveland-Elyria-Mentor, OH:	Cuyahoga, Geauga, Lake, Lorain, Medina

All other Counties in Ohio use the Midwest Region AAF.

OKLAHOMA (SOUTH)

All Counties in Oklahoma use the South Region AAF.

OREGON (WEST)

CPI AREAS:	COUNTIES
Portland-Vancouver-Beaverton, OR-WA MSA:	Clackamas, Columbia, Multnomah, Washington, Yamhill
Salem, OR MSA:	Marion, Polk

All other Counties in Oregon use the West Region AAF.

PENNSYLVANIA (NORTHEAST)

CPI AREAS:	COUNTIES
New York-Northern New Jersey-Long Island, NY-NJ-PA MSA	
Metropolitan Area Components:	
Pike County, PA HMFA:	Pike
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA:	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA MSA:	
Metropolitan Area Components:	
Armstrong County, PA HMFA:	Armstrong
Pittsburgh, PA HMFA:	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland

All other Counties in Pennsylvania use the Northeast Region AAF.

RHODE ISLAND (NORTHEAST)

All Counties/Towns in Rhode Island use the Northeast Region AAF.

SOUTH CAROLINA (SOUTH)

All Counties in South Carolina use the South Region AAF.

SOUTH DAKOTA (MIDWEST)

All Counties in South Dakota use the Midwest Region AAF.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

TENNESSEE (SOUTH)

All Counties in Tennessee use the South Region AAF.

TEXAS (SOUTH)

CPI AREAS:	COUNTIES
Dallas-Fort Worth-Arlington, TX MSA	
Metropolitan Area Components:	
Dallas, TX HMFA:	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall
Fort Worth-Arlington, TX HMFA:	Johnson, Parker, Tarrant
Wise County, TX HMFA:	Wise
Henderson County, TX:	Henderson
Hood County, TX:	Hood
Houston-Baytown-Sugar Land, TX MSA	
Metropolitan Area Components:	
Austin, County, TX HMFA:	Austin
Brazoria County, TX HMFA:	Brazoria
Houston-Baytown-Sugar Land, TX HMFA:	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller

All other Counties in Texas use the South Region AAF.

UTAH (WEST)

All Counties in Utah use the West Region AAF.

VERMONT (NORTHEAST)

All Counties/Towns in Vermont use the Northeast Region AAF.

VIRGINIA (SOUTH)

CPI AREAS:	COUNTIES
Culpeper County, VA:	Culpeper
King George County, VA:	King George
Washington-Arlington-Alexandria, DC-VA-MD-WV MSA	
Metropolitan Area Components:	
Warren County, VA HMFA:	Warren
Washington-Arlington-Alexandria, DC-VA-MD HMFA:	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city

All other Counties/Cities in Virginia use the South Region AAF.

SCHEDULE C - CONTRACT RENT ANNUAL ADJUSTMENT FACTORS - **AREA DEFINITIONS**

WASHINGTON (WEST)

CPI AREAS:	COUNTIES
Bremerton-Silverdale, WA MSA:	Kitsap
Island County, WA:	Island
Olympia, WA MSA:	Thurston
Portland-Vancouver, OR-WA MSA:	Clark, Skamania,
Seattle-Tacoma-Bellevue, WA MSA	
Metropolitan Area Components:	
Seattle-Tacoma-Bellevue, WA HMFA:	King, Snohomish
Tacoma, WA HMFA:	Pierce

All other Counties in Washington use the West Region AAF.

WEST VIRGINIA (SOUTH)

CPI AREAS:	COUNTIES
Hagerstown-Martinsburg, MD-WV MSA::	Berkeley, Morgan
Washington-Arlington-Alexandria, DC-VA-MD-WV MSA	
Metropolitan Area Components:	
Jefferson County, WV HMFA:	Jefferson

All other Counties in West Virginia use the South Region AAF.

WISCONSIN (MIDWEST)

CPI AREAS:	COUNTIES
Milwaukee-Waukesha-West Allis, WI MSA:	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI:	Pierce, St. Croix
Racine, WI MSA:	Racine

All other Counties of Wisconsin use the Midwest Region AAF.

WYOMING (WEST)

All Counties in Wyoming use the West Region AAF.

PACIFIC ISLANDS (WEST)

The American Samoa, Guam, Northern Mariana Islands, and Palau use the West Region AAF.

PUERTO RICO (SOUTH)

All Municipios use the South Region AAF.

VIRGIN ISLANDS (SOUTH)

The U.S. Virgin Islands uses the South Region AAF.

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CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 1, 2007

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Milk marketing orders:
- Northeast et al.; published 12-29-06

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico and South Atlantic coastal migratory pelagic resources; published 1-23-07

COMMERCE DEPARTMENT

Patent and Trademark Office

Patent cases:
- Disclosure Document Program; elimination; published 11-3-06

ENVIRONMENTAL PROTECTION AGENCY

Solid wastes:
- Hazardous waste; identification and listing—
  - Exclusions; published 2-1-07

GENERAL SERVICES ADMINISTRATION

Acquisition regulations:
- Recovery products and services; purchasing by State and local governments through Federal supply schedules; published 2-1-07

Federal travel:
- 2006 Privately owned automobile mileage reimbursement; published 1-30-07

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
- Cape Fear River, Wilmington, NC; published 12-29-06

PENSION BENEFIT GUARANTY CORPORATION

Single employer plans:
- Allocation of assets—
  - Interest assumptions for valuing and paying benefits; published 1-12-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Food Stamp Program:
- Disqualified recipient reporting and computer matching requirements; comments due by 2-6-07; published 12-8-06 [FR E6-20765]

EXECUTIVE OFFICE OF THE PRESIDENT

Central Intelligence Agency

Freedom of Information Act; implementation:
- Processing fees; comments due by 2-7-07; published 1-8-07 [FR E6-22574]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Northeastern United States fisheries—
  - Atlantic herring; comments due by 2-9-07; published 1-10-07 [FR E7-00202]

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Bering Sea and Aleutian Islands pacific cod; comments due by 2-5-07; published 12-7-06 [FR E6-20700]
- Northeastern United States fisheries—
  - Emergency closure due to presence of toxin causing paralytic shellfish poisoning; comments due by 2-5-07; published 1-4-07 [FR 06-09975]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Section 104 of the Energy Policy Act of 2005; implementation; comments due by 2-5-07; published 12-7-06 [FR 06-09523]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):
- Accounting and reporting requirements for nonoperating public utilities and licensees; comments due by 2-8-07; published 1-9-07 [FR E6-22692]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Gasoline distribution bulk terminals, pipeline facilities, and gasoline dispensing facilities; comments due by 2-8-07; published 1-8-07 [FR E7-00019]

Air pollution; standards of performance for new stationary sources:
- Volatile organic compounds (VOC)—
  - Synthetic organic chemicals manufacturing industry and petroleum refineries; equipment leaks; comments due by 2-8-07; published 1-8-07 [FR E7-00020]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Ohio; comments due by 2-9-07; published 1-10-07 [FR E7-00178]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Ohio; comments due by 2-7-07; published 1-8-07 [FR E6-22617]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 2-5-07; published 1-4-07 [FR E6-22418]
- Michigan; comments due by 2-7-07; published 1-8-07 [FR E6-22616]
- Tennessee; comments due by 2-5-07; published 1-4-07 [FR E6-22478]
- Virginia; comments due by 2-7-07; published 1-8-07 [FR E6-22553]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Diphenylamine; comments due by 2-5-07; published 12-6-06 [FR E6-20648]

Solid wastes:
- Hazardous waste; identification and listing—
  - Exclusions; comments due by 2-5-07; published 12-20-06 [FR E6-21603]

FEDERAL COMMUNICATIONS COMMISSION

Television broadcasting:
- Advanced television (ATV) systems—
  - Digital television transition; DTV table of allotments; tentative channel designations; comments due by 2-9-07; published 1-19-07 [FR E7-00722]

FEDERAL RESERVE SYSTEM

Loans to executive officers, directors, and principal shareholders of member banks (Regulation O):
- Reporting requirements; comments due by 2-9-07; published 12-11-06 [FR E6-20956]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
- Section 104 of the Energy Policy Act of 2005; implementation; comments due by 2-5-07; published 12-7-06 [FR 06-09523]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Color additives:
- Certification services fee increase; comments due by 2-5-07; published 12-7-06 [FR E6-20800]

HEALTH AND HUMAN SERVICES DEPARTMENT

Inspector General Office, Health and Human Services Department

Medicare and State healthcare programs; fraud and abuse:
- New safe harbors and special fraud alerts; comment request; comments due by 2-9-07; published 12-11-06 [FR E6-20994]

HOMELAND SECURITY DEPARTMENT

Chemical facility anti-terrorism standards; comments due by 2-7-07; published 12-28-06 [FR 06-09903]

INTERNATIONAL TRADE COMMISSION

Adjudicative procedures; proposed amendments of rules for investigations and proceedings; comments due by 2-6-07; published 12-8-06 [FR E6-20766]

JUSTICE DEPARTMENT

Executive Office for Immigration Review

Immigration Appeals Board; composition of board and

temporary board members; comments due by 2-5-07; published 12-7-06 [FR E6-20720]

JUSTICE DEPARTMENT
Prisons Bureau
Community programs and release:
Inmate furloughs; comments due by 2-5-07; published 12-6-06 [FR E6-20612]

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Wage and Hour Division
Family Medical Leave Act; information request; comments due by 2-7-07; published 12-1-06 [FR 06-09489]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Section 104 of the Energy Policy Act of 2005; implementation; comments due by 2-5-07; published 12-7-06 [FR 06-09523]

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Rulemaking petitions:
Shaw, Sally; comments due by 2-5-07; published 11-20-06 [FR E6-19568]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft:
Production and airworthiness approval requirements; standardization; comments due by 2-5-07; published 10-5-06 [FR 06-08281]
Airworthiness directives:
Alpha Aviation Design Ltd.; comments due by 2-5-07; published 1-5-07 [FR E6-22623]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 2-7-07; published 1-8-07 [FR E7-00051]
PZL-Bielsko; comments due by 2-5-07; published 1-5-07 [FR 06-09988]
Raytheon Aircraft Co.; comments due by 2-9-07; published 12-11-06 [FR E6-20970]
Reims Aviation S.A.; comments due by 2-7-07; published 1-8-07 [FR E7-00050]
SOCATA Groupe AEROSPATIALE; comments due by 2-5-07; published 1-5-07 [FR E6-22578]
Stemme GmbH & Co.; comments due by 2-8-07; published 1-9-07 [FR E6-22620]
Turbomeca S.A.; comments due by 2-9-07; published 1-10-07 [FR E6-22533]
Airworthiness standards:
Special conditions—
Aviation Technology Group, Inc., Javelin Model 100 airplane; comments due by 2-7-07; published 1-8-07 [FR E6-22647]
Gulfstream Aerospace Corp. Model G-1159A airplanes; comments due by 2-9-07; published 1-10-07 [FR E7-00197]

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Transportation infrastructure management:
Projects of national and regional significance; evaluation and rating; comments due by 2-9-07; published 12-28-06 [FR E6-22322]

TREASURY DEPARTMENT
Alcohol and Tobacco Tax and Trade Bureau
Alcohol; viticultural area designations:
San Francisco Bay, Solano County, CA; comments due by 2-5-07; published 12-5-06 [FR E6-20504]

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

In the Federal Register on January 31, 2007, the cumulative list of Public Laws for the second session of the 109th Congress was printed incorrectly. A corrected list will be published in the **Federal Register** on February 2, 2007.

Last List January 19, 2007

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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Feb 6	Feb 21	March 8	March 23	April 9	May 7
Feb 7	Feb 22	March 9	March 26	April 9	May 8
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Feb 9	Feb 26	March 12	March 26	April 10	May 10
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Feb 13	Feb 28	March 15	March 30	April 16	May 14
Feb 14	March 1	March 16	April 2	April 16	May 15
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Feb 16	March 5	March 19	April 2	April 17	May 17
Feb 20	March 7	March 22	April 6	April 23	May 21
Feb 21	March 8	March 23	April 9	April 23	May 22
Feb 22	March 9	March 26	April 9	April 23	May 23
Feb 23	March 12	March 26	April 9	April 24	May 24
Feb 26	March 13	March 28	April 12	April 27	May 29
Feb 27	March 14	March 29	April 13	April 30	May 29
Feb 28	March 15	March 30	April 16	April 30	May 29